

***United States Court of Appeals
for the Second Circuit***



**APPELLEE'S
APPENDIX**

77-1484

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 77-1484

UNITED STATES OF AMERICA,

Appellee,

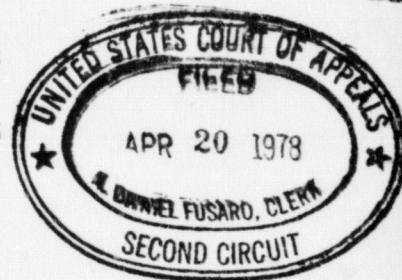
—v.—

ARNOLD NELSON MAHLER (also known as
"Arnold Nelson"), and DEAN H. UBBEN,
Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

APPENDIX FOR THE UNITED STATES OF AMERICA

ROBERT B. FISKE, JR.,
*United States Attorney for the
Southern District of New York,
Attorney for the United States
of America.*



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1 impeachment of Mr. Mahler's prior conviction. I have
2 concluded that I will allow it to be used, whatever
3 initial expressions I may have given when the question
4 was first put to me.
5

6 First, insofar as there may be - and I am not
7 sure that there is any discretion with respect to
8 calculating the 10 years - I resolve that against the
9 defendant in the light of all the circumstances as they
10 have been explained to me. I don't think, based on what
11 I understand is both the language of the rule and its
12 history, I don't think that I have discretion to decide
13 that the prejudice from this particular conviction will
14 outweigh its relevance so that it should be excluded.
15 But after thinking about it over and over, I think if
16 there is any dicretion, considering the nature of the
17 case and what's been given to me about the character
18 of the proposed proof concerning Mr. Mahler and his life
19 in general, and his activities in particular, whether
20 guilty or innocent, I think I would resolve that too
21 against Mr. Mahler and let this impeaching evidence be
22 used.

23 Now, I have been told, Mr. Ford, by you that
24 Mr. Mahler feels his testimony is so indispensable that
25 no matter how this ruling went he would find it necessary

1 ks3
2 and requested a certified check. I then give you a
3 form, a little ticket to fill out. You then fill out
4 the ticket, return it with the check, requesting certi-
5 fication.

6 I then put the ticket through the machine.
7 The ticket is dated April 4, 1973, and it was received April
8 3rd, 1973.

9 MR. RAKOFF: Thank you very much.

10 THE COURT: Any redirect?

11 MR. MAHLER: No, your Honor.

12 (Witness excused.)

13 THE COURT: Call your next witness.

14 MR. MAHLER: Mr. Charles J. Hecht.

15 - -

16 C H A R L E S J. H E C H T , called as a witness
17 by the defendant Mahler, having been first duly sworn,
18 testified as follows:

19 DIRECT EXAMINATION

20 BY MR. MAHLER:

21 Q Mr. Hecht, when were you born, sir?

22 A 1939.

23 Q And are you an attorney, sir?

24 A Yes, I am.

25 Q And when were you admitted to practice law in

1 New York?

2 A 1965.

3 Q And are you admitted to the United States
4 Supreme Court?

5 A Yes, I am.

6 Q And are you also admitted to practice in the
7 United States District Court?

8 A The Southern District and the Eastern District
9 of New York.

10 Q And are you admitted, sir, to the Court of
11 Appeals?

12 A Second Circuit.

13 Q Where did you attend law school, Mr. Hecht?

14 A Cornell law school in Ithaca, New York.

15 Q And did you obtain a degree from that University?

16 A Yes, I did, an LLB.

17 Q Have you also been the recipient of any awards?

18 A I think I won an American Jurisprudence award
19 in administrative law. That's been a while.

20 Q That was in 1963?

21 A Some time during law school.

22 Q Have you also had the opportunity to write any
23 articles?

24 MR. RAKOFF: Your Honor, if the purpose of all
25

1 this, which I suspect it is for giving these questions --

2 MR. LONDIN: We can't hear Mr. Rakoff.

3 MR. RAKOFF: If the purpose of this is to
4 qualify this witness as a legal expert, I am going to
5 object, and I would request a side bar.
6

7 THE COURT: All right.

8 MR. LONDIN: We can't hear.

9 THE COURT: Well, come to the side bar and we
10 will whisper it again.

11 (At side bar.)

12 THE COURT: You don't question the expertise
13 of somebody who is admitted to the Supreme Court? That
14 was the United States Supreme Court?

15 MR. MAHLER: Yes, your Honor.

16 THE COURT: But what is this man going to
17 testify?

18 MR. MAHLER: My next question would be about
19 any articles that he has written pertaining to Rule 133,
20 specifically the relationship to 133 transactions and the
21 period of time which 133 became valid and 144 took effect
22 and the relationship with Mr. Zucker, also.

23 THE COURT: Is there any issue about that?

24 What is the issue?

25 MR. MAHLER: Pertaining to whether one item

1 ks6 Hecht - direct A 5 3534
2 should or should not have been included in the booklet,
3 your Honor, and which should have been required to have
4 been. There is allegedly allegations that the booklet
5 did not comply with certain regulations of 133. He will
6 also testify to the exemptions that are available, which
7 does not require registration of securities to be sold to
8 the public, as in the case of Industries International.

9 There will also be direct testimony as to
10 the relationship of Mr. Zucker and myself and the threats
11 that were made.

12 THE COURT: I won't allow any of that.
13 You and Mr. Ford can prepare instructions on questions.
14 This is an American legal question and the way we work it
15 is the judge is supposed to know the answers. He really
16 doesn't, but he learns them from the lawyers, but we don't
17 put witnesses on the stand to testify about the law, so
18 send him away.

19 MR. FORD: Your Honor, may I be heard?

20 THE COURT: Yes.

21 MR. FORD: Mr. Hecht, your Honor, is offered
22 as a fact witness on some items.

23 THE COURT: On what items? That is what
24 I was asking Mr. Mahler, what items?

25 MR. FORD: The bias of Mr. Zucker.

THE COURT: Is that all?

MR. MAHLER: When I was referring to threats, your Honor -- perhaps I am not using the right words -- Mr. Ford has reviewed Mr. Hecht's testimony with me, and he might be more familiar with what I am trying to say.

THE COURT: Why don't you let Mr. Ford examine him?

MR. FORD: Your Honor, if I could be heard on that? Mr. Hecht is offered as a combination fact and expert witness.

The facts to which he would testify would arise out of the fact that there was a time that he represented Mr. Mahler and that in the course of that representation he had certain dealings with Mr. Zucker and that he heard Mr. Zucker say certain things to Mr. Mahler with respect to this very suit which brings us here today.

THE COURT: What things?

MR. FORD: He threatened him, Mr. Hecht will say, I believe, if asked, that Mr. Zucker said to Mr. Mahler that if Mr. Mahler doesn't get off his back in the Nationwide case that he would come in here, he would come here in court and bury Mahler.

THE COURT: Now, look, you don't need any combination for that. I don't want any of his expertise.

1 ks8 Hecht - direct A 7 3536
2 MR. FORD: No, your Honor, that's another
3 thing.

4 Now, your Honor, in the Government's opening
5 there was an implication that the very fact that the
6 securities here were not subject to a registration state-
7 ment was improper.

8 Now, the thrust of this witness' testimony
9 would be that as a man who advises businesses, Mr. Mahler
10 among them, on the ways of raising financing, arranging
11 acquisitions and mergers, that there are certain circum-
12 stances, there are certain proper factual circumstances
13 under which businesses such as Gulf & Western, for instance,
14 have used unregistered stock to get mergers and acquisi-
15 tions.

16 What we have here, your Honor, is not really a
17 question of what the law presently is. What we have
18 is a question of whether or not, given certain factual
19 circumstances, in late 1972, a transaction like this wa
20 arguably proper.

21 Now, obviously, the final determination as a
22 legal matter is for the Court, but we have a very com-
23 plicated transaction.

24 This man can testify as to the circumstances
25 under which businesses used this kind of a rule.

1 THE COURT: Yes, I won't allow it. When
2 they get indicted, I will hear them. I won't allow that.
3 I understand what you said. I heard what you said.
4

5 MR. PANZER: Judge, there is --

6 THE COURT: If other people were doing things
7 that may arguably be criminal, tell Mr. Rakoff about it,
8 but it is not evidence in favor of Mr. Mahler.

9 MR. FORD: But, your Honor, there is an
10 implication here that the very fact that the securities
11 were not registered somehow violated the disclosure require-
12 ment of the 1933 and 1934 Act.

13 THE COURT: If you have an instruction you
14 want me to give the jury on that subject, or if you have
15 already included it in your own instructions, I will
16 consider it. It is not a subject for evidence.

17 MR. PANZER: Your Honor --

18 THE COURT: You don't have any standing here
19 whatever, Mr. Panzer.

20 MR. PANZER: I think it is important because
21 it is something I am going to bring out in my direct
22 case.

23 THE COURT: By whom, somebody who is also a
24 member?

25 MR. PANZER: No. You asked me why I have

1 ks10 Hecht - direct A 9 3538
2 standing,, why I am talking about it. I think what he
3 told Mahler with respect to --

4 THE COURT: What who told Mahler?

5 MR. PANZER: This lawyer.

6 THE COURT: Are you claiming he gave you legal
7 advice on this?

8 MR. MAHLER: He was my attorney, your Honor.

9 THE COURT: I thought Herman was.

10 MR. FORD: Not on this transaction.

11 THE COURT: Stay out of it.

12 MR. PANZER: I apologize.

13 THE COURT: From now on when we get to your
14 witnesses I will hear you, but do not help me with other
15 witnesses because it doesn't help me.

16 MR. PANZER: Okay.

17 MR. FORD: Your Honor, there are certain
18 factual circumstances under which people would try,
19 through the means of an S-1, to use a registration state-
20 ment to put securities on the market.

21 There are other reasons, such as a small
22 company not having the 3 to 6 months or the \$50, 000 might
23 use other means to get stock public, to get bank loans,
24 things like this.

25 These are all part of a factual background in

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Hecht - direct

A 10

a very complicated case, your Honor.

THE COURT: This case is not very complicated at all, and it is only going to get complicated if I allow in a lot of inadmissible evidence which I am not allowing, and I have heard you.

Now, really -- now, look, you may ask him about anything you like that he heard Mr. Zucker threaten you with and so on, but he is not a legal expert in this courtroom for this case.

You understand?

MR. MAHLER: Yes.

MR. FORD: Your Honor, if we are not going to offer him as a legal expert, can we qualify him as somebody in the field of corporate finance who, given certain factual circumstances, would make a recommendation that financing arrangements be made with a Rule 133 without --

THE COURT: No.

MR. FORD: Your Honor, this is a case where the Government has virtually buried the defendants with witnesses and pieces of paper. Now here is a defense witness who can, with the defendants, set a stage much the same as the Government's witnesses have set a stage. All the man is going to testify to, given your Honor's rules, will be the factual basis under which he, as

Hecht - direct

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1
2 somebody who advises on issues of corporate finance, would
3 advise be done. Then we will take the rest up as a
4 matter of law.

5 / THE COURT: No, I won't allow it.

6 Let's proceed.

7 (Continued on next page.)
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(In open court.)

BY MR. MAHLER:

Q Mr. Hecht, did there come a time when you met a Mr. Theodore Zucker?

A Yes.

Q When was that, sir?

A I would say June or July of 1972.

Q And then did there come a time when you did not see Mr. Zucker again for a period of time?

A I would say some time after October or November of 1972 until the latter part of 1975.

Q And do you recall any conversations that were held with Mr. Zucker -- well, do you recall when you met him in November of 1975?

A Yes.

Q And do you recall any conversations that occurred at that meeting?

A Yes.

Q And would you tell the Court what was said?

A Well, the first conversation is, we were there to inspect the books and records of a company, and Mr. Zucker gave us the cash disbursements ledger and some checks and said, "Here's a room and you can work in this room."

1 lp2 Hecht-direct A 13 3542
2 And we said thank you, and the next time we
3 spoke to him was later that morning.

4 Q And what was said at the conversation, if
5 you recall, later that morning?

6 A Well, he came in with his attorney and said,
7 "We would like a detailed list of what additional books
8 and records you want to inspect."

9 Q And were there any further conversations that
10 were held with Mr. Zucker that day?

11 A Well, in that conversation we said that we
12 just started our review of the books and we wanted to go
13 out to lunch to go over and try to make up a tentative
14 list of documents.

15 Q And did we then proceed to leave the premises
16 of Nationwide?

17 A I believe it was you, myself and Buddy Medoff,
18 and we went out to a local restaurant and had lunch and
19 made up a tentative list.

20 Q Prior to our going to lunch was there a con-
21 versation that you were party to between Mr. Zucker and
22 myself?

23 A Just something about some jewelry before lunch,
24 that they asked what you were doing, and you said you
25 were involved with a jewelry company, and that was before

1 lunch, and that's all I can recall.

2
3 Q Did there come a time when you were a party
4 to some conversations between Mr. Zucker and myself
5 reegarding Industries International?

6 A Well, after lunch we went back to the premises
7 and gave Mr. Zucker the list and discussed with him and
8 his attorney that these are the documents in the approximate
9 order we wanted them in. And he said that we could have
10 this document but couldn't have this document and that
11 document; we went down the list, and Mr. Zucker said,
12 "That's all I am going to give you."

13 And I said to Mr. Zucker and his attorney,
14 I said, "Look, we have got a court order; this is what the
15 court order says and we are entitled to look at all the
16 books and records."

17 And Mr. Zucker said basically that he didn't
18 agree with the Court.

19 And I said, "Well, then, let's all go up to
20 the court, your lawyer, myself, the accountant that was
21 with me, you and his lawyer, and let's go up to the Court,
22 the Supreme Court in Nassau County, and go back to the
23 Judge and see if this is what he means by his order."

24 And Mr. Zucker said, "We are not going to go;
25 I will show you out of the premises." And he took you and

1 I out of the premises and in the hallway and turned to you
2 and said, "You know, for nosing around in Nationwide
3 you're being a Son-of-a-Bitch."
4

5 And you said, "What do you mean?"

6 He said, "Look, when it comes to Industries
7 I am going to bury you."

8 Q Mr. Hecht, did you have occasion to meet with
9 Mr. Zucker --

10 A Well, I think there was something more that was
11 said in that conversation.

12 And you said, "What do you mean?"

13 And I just got you out of there before a fight
14 started between the two of you and made sure that you
15 left the premises and I went off to court.

16 Q Would you say there were ill feelings that
17 day?

18 A Yes. Animosities?

19 A Yes.

20 You were former partners in this business and
21 he was running it and you were out of it, and there were
22 bitter feelings because you wanted back in.

23 Q Did there come a time, Mr. Hecht, when you
24 again with me met with and overheard conversations between
25 myself and Mr. Zucker?

A Well, there were a number of times, there were a number of proceedings in that matter when both of you were in court, but except for one occasion I don't recall any discussion between you and Mr. Zucker relating to Industries directly.

Q Did there come a time when there was a trial at Nassau County where Mr. Zucker testified?

A Yes.

Q And did there come a time at that trial where you were a participant to a conversation between Mr. Zucker and myself?

A Well, there were a number of conversations, yes.

Q Were there any references made by Mr. Zucker that you were a party to regarding his testimony in court or regarding Industries International?

A Well, one day after I had been cross-examining him he came out of the courtroom and said, "You know, Arnie is having his fun today but when I get up to testify at Industries I am going to have my fun."

MR. MAHLER: Thank you, Mr. Hecht. I have no further questions.

THE COURT: Any other defendant?

(No response.)

THE COURT: Mr. Rakoff?

MR. RAKOFF: Yes.

CROSS EXAMINATION

BY MR. RAKOFF:

Q Mr. Hecht, you represent Mr. Mahler, do you not, in the Nationwide matter?

A Yes, I do.

Q Is that on a contingent fee basis?

A The fee would be fixed by the Court. It's a derivative action on behalf of the corporation.

Q It would be a percentage of whatever - if you succeeded in winning money, in whatever money you succeeded in winning?

A It would be a percentage payable by the corporation.

Q There is no question, is there, that there are bitter feelings or animosities growing out of this lawsuit between the parties?

A You know, I really don't -- they are both businessmen. Their animosities - I don't know if it has to do with this lawsuit. As a matter of fact, one of the things Mr. Zucker said, he said, "Arnie, if I were in your shoes I would do the same thing."

Q Mr. Zucker didn't ever say to you that in order to bury Arnold Nelson Mahler he was going to subject

lp7

Hecht-cross

1 himself to pleading guilty to seven years of sentence,
2 did he?

3
4 A He never discussed that he ever was in the
5 case except I knew he was a defendant from his lawyer.

6 Q He wasn't a defendant in November, 1975, was
7 he?

8 A I knew he was involved. His lawyer, Sid
9 Weisberg, mentioned it to me, because I called him up
10 afterwards, and I said, "Look, we have got a case here;
11 let's handle this case and we are not involved in the other
12 case, and let's keep it out of this."

13 Q So you knew all along that he was involved?

14 A I knew after that first conversation when we
15 left Nationwide in November, and I called up Sid, and I
16 said, "Look, we have got enough work to do as lawyers in
17 this case, and let's keep it apart," and he said, "Fine,
18 let's try."

19 Q And ultimately you learned that he had pled
20 guilty, didn't you?

21 A I learned some time this summer when his attorney
22 said to us -- you know, this case must have had 20 pro-
23 ceedings in court -- I would say some time this summer.

24 MR. RAKOFF: No further questions, your Honor.

25 THE COURT: Anything else?

(No response.)

Are you going to call him?

MR. PANZER: Can I have one minute with Mr. Ubben and give you the answer?

THE COURT: Yes.

Let me say one other thing, and I hope this is a permissible thing to say, and I will say it on the record:

Mr. Ubben, I have been listening to your testimony, particularly those places where you state under oath that you can't remember things but you will not deny them.

Now, some of the things that you say you can't remember and will not deny are pretty cogent things, like:

Did you commit a crime? You can't remember but you won't deny it.

Perhaps I am driven automatically -- and I am going to state it on the record so you will know it and all the world will know it -- to think a little more attentively about you as a witness than I might about others because of the peculiar circumstances of your case, and I am not believing you --

DEFENDANT UBBEN: Judge --

THE COURT: I don't want you to argue; I want you to listen.

1 sls

2 I imagine the jury is not believing you too,
3 but that is not my problem, that's your problem and Mr.
4 Panzer's.

5 But I just want to inform you that I'm not
6 believing you, and inform you in good faith that if you
7 say enough times that you can't remember but won't deny,
8 some grand jury might some day consider that perjury.
9 I'm just advising you of that.

10 DEFENDANT UBBEN: I will do my best, your
11 Honor.

12 THE COURT: Because I believe you are not
13 telling the truth.

14 Fortunately I don't have to decide it,
15 fortunately for you, but, as you know -- and that's why
16 I'm putting it on the record -- I have in my future and in
17 yours the task of deciding another important question in
18 which your credibility is going to be in issue.

19 DEFENDANT UBBEN: Yes.

20 THE COURT: And so there we are.

21 I am giving you that for your guidance, and if
22 it is wrongful of me to have done that, so be it. So
23 there we are.

24 Okay, have a good weekend.

25 MR. PANZER: I want to get a statement on the

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Bialek - direct

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three companies they are talking about there.

Q And it says in here that:

"Our firm would be very pleased to participate in preparing material for the proxy statement provided such financial statements as are included are audited by our firm. We believe it would not" -- underscored -- "be advisable for you to proceed with the merger in reorganization on the basis of unaudited financial statements, and we would not be willing to participate if unaudited financial statements are used."

Were you told that Fox had said this to representatives of International Industries?

A No, I was not.

Q Did you understand at the time that your work was being -- that the work you were being asked to do was going to go inside a proxy statement of some kind?

A No, I was not.

Q What did you understand from what was said to you would be done with your statement?

A Well --

MS. PARVER: Your Honor, I don't mean to be picky, but could we have it in terms of what was told to him as opposed to what he understood?

jks

Bialek - direct

4807

THE COURT: He was just now asked what was said to him, I thought.

What is the question?

Q Well, what did you understand from what was said?

THE COURT: Let's go the other way. I think that makes sense. Let's find out what was said.

Q What was said to you, Mr. Bialek, with respect to the use of the pro forma that was discussed at the meeting on November 8th and November 9th?

A It was my understanding that --

THE COURT: No, no. The question is what was said to you by whom.

A I believe it was either Billy or Dean Ubben told me that Jim Fortuin and Dave Norblom and Dean Ubben himself were getting a considerable block of stock in this corporation and thereby that would be changing the structure or the reflection -- the ratios of the stockholders in the corporation, and with the capital infusion they wanted to infuse 200,000 capital into the pro forma, they wanted to see what this pro forma would look like, and then decide whether if it would be feasible to go after financing.

Q Was the word "audit" discussed at these meetings of November 8th and November 9th, as best you

1 jks

Bialek - direct

2 can recall?

3 A Yes.

4 Q Tell us what was said about that, who said
5 what to whom?

6 A I brought up the fact that if they go after
7 financing, that I definitely wanted the audit.

8 Q Did you tell them that an audit was required?

9 A Yes, I did.

10 Q Did you discuss a fee for the audit?

11 A Yes. I told them there would be a minimum
12 of 3500.

13 Q Did you know that Elmer Fox wanted \$30,000
14 for the same thing?

15 MS. PARVER: Objection.

16 THE COURT: Yes, sustained.

17 A Do I have to --

18 Q Don't answer.

19 After the initial conversations, Mr. Bialek,
20 were you given a number of documents to review and to
21 work with?

22 A I didn't hear you, Mr. Heinemann.

23 Q I'm sorry. Were you given some documents
24 to review and work with?

25 A Yes.

before?

A Yes.

Q Could you tell us when?

A I had a friend living there in one of the buildings. It is an apartment complex and a friend of mine lived in one of the other buildings. That particular apartment, no, I was not in that particular apartment.

Q Did this friend have anything to do with Industries International?

A No, he did not.

Q My question, Mr. Bialek, is had you ever gone to this particular apartment room or suite?

A Not to my knowledge, no.

Q Who was there at the time you got there, to the best of your recollection?

A I think -- well, Mr. Ubben was there. I met him there, and I think Billy Lovejoy was there, and then there were about three, four other individuals there.

Q Well, did you have a conversation with anyone on that day, Mr. Bialek?

A To the best of my recollection, I asked Dean Ubben, Dean, to step in the bedroom, and I said, "Hey, Dean, what the hell's going on? You know, I'm getting a call from a broker and Christ, you know, he's got my -- apparently got the pro forma financial statements, and I

1 jkp3

Bialek-direct

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2 want to know what the heck was going on."

3 At that point Dean had informed me that more
4 than likely they will be going with this, going through
5 with this Bell-Ko project, and I says, "Well," I says,
6 "how about the audit?"

7 And he says, "Don't worry."

8 He says, "You've got the audit."

9 And he says, "There is nothing to worry about
10 because we got this expert attorney in New York that's
11 handling the whole thing like that and he'll take care of
12 everything."

13 Q Well, did Mr. Ubben tell you what the purpose
14 of the amended pro forma was for?

15 A No.

16 Q Incidentally, with respect to this, we are
17 talking about an amendment to the November 13th financials
18 that are Government's Exhibit 111, are we not?

19 A Yes.

20 Q And those are the documents on the first page of
21 which you wrote "For your use only," or something like
22 that?

23 A Yes.

24 Q At that time that you had this conversation
25 with Mr. Ubben did you understand there to be anything

1 jkp4

Bialek-direct

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2 wrong with the statement being with this broker, Bill
3 Wellens, in New York?

4 A No, not particularly, but, you know, I just
5 didn't like the idea because that particular statement
6 reflected a 200,000 cash infusion which really hadn't
7 happened.

8 Q Was there anything in the document that you
9 prepared that explained that?

10 A Yes, there was a footnote in there.

11 Q Was there any other reason why you were con-
12 cerned at that time when you learned that some broker in
13 New York had a copy of this financial?

14 A Well, I had a concern about getting the audit
15 on it.

16 Q This is the audit you had discussed with Mr.
17 Ubben before?

18 A Yes, this is the one we discussed back in Novem-
19 ber, when I first had the engagement with International.

20 Q Incidentally, you said that Mr. Ubben men-
21 tioned an attorney in New York.

22 A Yes.

23 Q Do you recall whether Mr. Ubben told you the
24 name of the attorney?

25 A I don't really recall the name of the individual,

pm 1 sls

2 (In the courtroom in the absence of the
3 jury.)

4 THE COURT: I think it may possibly be a
5 contribution to remind counsel that the testimony of a
6 defendant in this Circuit, in addition to its bearing on
7 the jury's deliberations, may, in the case of a con-
8 viction, have a bearing on the sentence; and I will
9 say that I have heard in this case testimony which I am
10 driven to regard as so flagrantly incredible that this
11 cautionary observation seems to me possibly to have some
12 potential utility in serving the ends of justice.

13 If I am mistaken in that, I'm sorry, but I
14 think the purpose is the one I stated, and I think all of
15 you should take it under advisement for such useful ends
16 as it may serve in the interests of your respective
17 clients.

18 Now, the Government had some requests to hand up?

19 MR. RAKOFF: Yes, your Honor, belated but,
20 hopefully, not without some use.

21 And also, your Honor, we have redacted the
22 indictment. I will hand that up to the Court.

23 THE COURT: Did you distribute them?

24 MR. RAKOFF: Yes, we have piles here we will
25 give to each defendant here.

time.

The first deal was 50 cents a share, and then everything over \$3 then became the deal. Then became \$5000; then became 5000 shares. It's all there.

Ladies and gentlemen, I am going to have to close.

My wife gave me a little story this past week, and she said to me, because I was pretty blue and depressed --

Your Honor, it's a one-minute poem that's not in evidence; I gather I'm not allowed to do it?

THE COURT: You can tell a one-minute poem.

MR. MAHER: If you think you are beaten, you are; if you think you dare not, you don't. If you would like to win and think you can't, it's almost a cinch you won't. Life's battles don't always go to the stronger or faster man but sooner or later the one who wins is the one who thinks he can.

Ladies and gentlemen, I only hope that I have been able to show to you that I have not participated in any fraud at any time with any knowledge or any intent in this transaction. I have done nothing wrong, and I swear to you under -- I swear to you that I am innocent of all the charges.

United States Department of Justice

ADDRESS REPLY TO
"UNITED STATES ATTORNEY"
AND REFER TO
INITIALS AND NUMBER

JSR:dl

UNITED STATES ATTORNEY
SOUTHERN DISTRICT OF NEW YORK
ONE ST. ANDREW'S PLAZA
NEW YORK, NEW YORK 10007

July 29, 1977

Robert P. Leighton, Esq.
15 Park Row
New York, NY

Re: United States v. Arnold Nelson Mahler, et al.
76 Cr. 1047 (HP)

Dear Mr. Leighton:

Pursuant to Rule 609(b), Federal Rules of Evidence, the Government hereby gives notice of its intent to impeach your client, Arnold Nelson Mahler, with his prior felony convictions for giving, and conspiring to give, false sworn testimony to the S.E.C. and for engaging in stock fraud and stock fraud conspiracy, should he place his credibility in issue (as by taking the stand) at the upcoming trial of the above-captioned case. Similarly, given the fact that Mahler's defense at the first trial of this case consisted in large measure of a claim of lack of criminal knowledge and intent, the Government anticipates that it will offer these prior convictions on its direct case as proof of similar acts bearing on knowledge and intent.*

* At the first trial of this case, the Government offered Mahler's prior convictions for impeachment purposes but not as part of its direct case, partly because Mahler represented to the Court through his counsel that he would be taking the stand no matter what. However, Mahler did not take the stand; instead he "fired" his court-appointed counsel and represented himself. The Government did introduce on its direct case two contemporaneous similar acts - "HUP" and "UGBI" - the former of which related to Mahler among other defendants. The Government intends to offer these acts on the retrial as well.



Robert P. Leighton, Esq.

- 2 -

July 29, 1977

present case, as you know, the Government characterizes Mahler with masterminding a stock fraud conspiracy -- involved, among those objects with which Mahler was most particularly involved, the bribing of brokers, the manipulation of stock prices, and the providing of false testimony and false documents to the S.E.C. Mahler's first felony conviction -- the facts of which are set out in detail in United States v. Mahler, 363 F.2d 673 (2d Cir. 1966) -- was similarly a conviction for giving, and conspiring with others to give false testimony to the SEC, so as to try to conceal a stock fraud carried out through the bribing of brokers and the manipulation of stock prices by and through Mahler. Likewise, Mahler's second felony conviction -- the facts of which are briefly set out in United States v. Light, 394 F.2d 908 (2d Cir. 1968) -- consisted of a guilty plea to seven counts of stock fraud and stock fraud conspiracy again centering on the bribing of brokers, the manipulation of the prices of still another stock, and the wilful deception of the S.E.C. Mahler began serving his concurrent 18-month sentences for both these convictions on February 10, 1967, but was released on parole, after serving only four months in Danbury prison, on June 19, 1967.

Since both of Mahler's prior convictions involved dishonesty and false statement, they were automatically admissible for impeachment purposes so long as a period of not more than ten years had elapsed since Mahler's release from Danbury (Rule 609(a)(2), Fed. R. Evid.), and they will continue to be admissible for this purpose, notwithstanding the fact that slightly more than ten years will have elapsed by the time of the retrial, if their probative value is found by the Court to substantially outweigh their prejudicial effect (Rule 609(b), Fed. R. Evid.). At the first trial of this case, after extensive hearings and submissions in which Mahler argued that the ten-year period should be deemed to have already elapsed because his original surrender to Danbury

Robert P. Leighton, Esq.

- 3 -

July 29, 1977

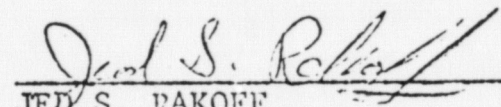
had been delayed partly at the behest of the Government, Judge Frankel ruled that (a) the ten-year period had not yet elapsed and so the convictions were automatically admissible, and that, alternatively, (b) even if the ten-year period could be said to have elapsed so that he had any discretion in the balancing of probative value versus prejudicial effect, he found the probative value compelling and resolved the balance in favor of the Government. While the ten-year period has now lapsed (as a result of the delay directly occasioned by Mahler's refusal to accept an 11-man verdict at the first trial following the heart seizure of the twelfth juror), the ground of Judge Frankel's alternative holding -- that the probative value of the convictions substantially outweigh their prejudice -- remains fully applicable to the retrial, and we intend to apply to Judge Pollack to make a similar finding at the time of the retrial. Moreover, to the extent that the convictions are admitted for purposes other than impeachment, i.e. as similar acts bearing on knowledge and intent, no ten-year time limit is applicable in any case (Rule 404(b), Fed. R. Evid., and see Rule 803(22), Fed. R. Evid.).

If you intend to contest the introduction of these convictions by the Government for the purposes stated, we request that you file your objections no later than two weeks before trial, so that we can submit reply papers and so that the matter may be resolved by the Court (if it is so inclined) prior to trial, thus avoiding any burdensome delays during the trial itself.

Very truly yours,

ROBERT B. FISKE, JR.
United States Attorney

By:


JED S. RAKOFF
Assistant United States Attorney
(212) 791-1923

cc: Hon. Milton Pollack
United States District Judge
United States Courthouse - Room 2102
Foley Square
New York, NY 10007

September 23, 1977

JSR:ce
9-3554

Hon. Milton Pollack
United States District Judge
Room 2102
United States Courthouse
Foley Square
New York, N.Y. 10007

Re: United States v. Arnold Nelson Mahler
et al., 76 Cr. 1047 (SF)

Dear Judge Pollack:

Prior to the first trial of this case, the Government submitted to the Court and all defense counsel a Trial Memorandum outlining the Government's case. Enclosed please find a considerably expanded version of that Memorandum, outlining in some detail the case the Government expects to present against the remaining three defendants (Mahler, Ubben and Lovejoy) at the re-trial of this case. Inasmuch as Your Honor did not preside over the first trial of this factually-detailed case, it was the Government's thought that this Memorandum might be of some assistance in familiarizing Your Honor with the proof that can be anticipated on the re-trial.

The Government is not providing copies of this expanded version of the Memorandum to counsel for the remaining defendants, and respectfully requests that this Memorandum be kept by the Court in camera until the end of trial. The primary reason for this request relates to the fact that, at the first trial of this case, most of the defendants took the stand and, having seen the Government's case, proceeded to attempt to exculpate themselves by giving false explanations for their conduct carefully tailored to the Government's proof. Indeed, the defendants' perjuries in this regard were so blatant that Judge Frankel, on several occasions, expressly stated as much at side-bar. Thus, Judge Frankel was driven to say to defendant Ubben during Ubben's testimony:

Hon. Milton Pollack

-2-

September 23, 1977

"I am not believing you -- I imagine the jury is not believing you too, but that is not my problem, that's your problem ... But I just want to inform you that I'm not believing you, and inform you in good faith that some grand jury might some day consider that perjury." (Tr. 3849-50).

Similarly, while the defendant Mahler did not take the stand, he represented himself and, under the guise of asking questions on cross-examination, impliedly testified, in a wantonly perjurious manner, leading Judge Frankel to tell him:

"Some of the questions you asked I would have a lawyer disbarred for. You are asking questions trying to show something is true that you know to be false, or vice versa ... If you ever do that again, I am going to instruct the Government to bring contempt proceedings against you." (Tr. 3307)

Finally, toward the end of the defense case (which lasted three-and-a-half weeks), Judge Frankel summed it up as follows:

"I think it may possibly be a contribution to remind counsel that the testimony of a defendant in this Circuit, in addition to its bearing on the jury's deliberations, may, in the case of a conviction, have a bearing on the sentence; and I will say that I have heard in this case testimony which I am driven to regard as so flagrantly incredible that this cautionary observation seems to me possibly to have some potential utility in serving the ends of justice." (Tr. 5576).

Hon. Milton Pollack

-3-

2 34
September 23, 1977

It would be naive not to assume that the defendants will once again attempt to escape justice at the retrial by giving perjurious testimony -- and with the added benefit this time of having heard the Government's entire case and summation at the first trial. To give them the still further benefit of knowing, in great detail, the Government's entire case and approach on the retrial, as incorporated in the expanded outline of the Government's case here attached, would be to leave the Government defenseless in the face of the defendants' lies.

Moreover, defense counsel cannot claim any legitimate prejudice to their position from not seeing the enclosed memorandum at this time. With the transcript of the first trial plus the Government's original trial memorandum all before them, they already know the Government's case far better than defense counsel are ordinarily entitled to prior to trial. Nonetheless, a copy of this letter is being furnished to the three remaining defense counsel, so that they are aware of the Government's request that the enclosed outline be kept in camera for now and can submit objections if they care to. It is the Government's hope that, upon reflection, defense counsel will conclude that, rather than objecting to this procedure, it is to their benefit to take mutual advantage of it, and submit to this Court, prior to trial, similar outlines of their client's cases, likewise to be kept in camera until the end of the case -- a procedure to which the Government would be fully agreeable on this reciprocal basis.

Very truly yours,

ROBERT. B. FISKE, JR.
United States Attorney

By:

JED S. RAKOFF
Assistant United States Attorney

JSR:ds
9-3554

A 35

Hon. Milton Pollack

-4-

September 23, 1977

cc:

Norman E. Arnoff, Esq.
(Attorney for defendant Lovejoy)
630 Fifth Avenue
New York, New York

David Blackstone, Esq.
(Attorney for defendant Ubben)
401 Broadway
New York, New York

Robert P. Leighton, Esq.
(Attorney for defendant Mahler)
15 Park Row
New York, New York

Endorsement

Stubborn persistence on grounds
that lack factual basis and
present no legal cause have
marked the defendant's
resistance to retrial of the
grave charges against him. Every
effort to delay and embarrass
and embroil this litigation in
side issues has been used by him
in the vain expectancy that
re-telling meritless positions will
enhance their credibility and
standards.

It suffices to say this latest attempt
to derail the trial and plunge
it into delay and confusion on
false bases is no better than its
predecessors, which were rejected.

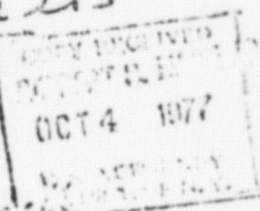
Morton R. Bend

So Ordered

October 5, 1977

Morton R. Bend

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x

UNITED STATES OF AMERICA,

-against-

ARNOLD NELSON MAHLER, aka
ARNOLD NELSON, and DEAN H. UBBEN,

Defendants.

----- x

New York, New York

October 6, 1977-10:00 a.m.

BEFORE:

HON. MILTON POLLACK

APPEARANCES:

ROBERT B. FISKE, JR., Esq.,
United States Attorney for the
Southern District of New York

BY: JED S. RAKOFF, Esq.,
Assistant United States Attorney

ROBERT LEIGHTON, Esq.,
Attorney for Defendant Arnold Nelson Mahler

DAVID BLACKSTONE, Esq.,
Attorney for Defendant Dean H. Ubben

precluding the Government from introducing Mr. Mahler's prior convictions on the direct case. It seems to me that the problem there runs into the similar acts doctrine, and I will have to recheck, but if the matter is related to similar acts, then this motion lacks merit.

I tried the Puco case, and that was a different story entirely, so the citation of the Puco case doesn't help on this particular score.

My present impression is that this motion to preclude the Government from introducing Mr. Mahler's prior convictions for securities misconduct will be denied if those convictions are related to prior similar acts.

MR. LEIGHTON: Would your Honor also consider rather than allowing the Government to introduce the judgment of conviction, restrict the Government to introducing the underlying facts of the judgment only as opposed to the judgment of conviction?

THE COURT: Introducing the underlying facts might require a week for each of the convictions whereas to introduce the judgment introduces the prior act in short order.

MR. LEIGHTON: I think the prejudicial effect that it would have on the defendant would be less if we had the facts coming in.

2 THE COURT: The defendant can't be allowed to
3 appear in the wrong light. All he can say is he is innocent
4 of that charge, but if he is guilty of prior similar acts
5 which are just the same, that is unfortunate for him.

6 As I say, I haven't decided that finally until
7 I examine what the purpose is of those prior convictions.

8 In this same connection, the Government has
9 called to my attention a matter on which I wish to give
10 each of the lawyers instructions, and also I want these
11 instructions conveyed to Mr. Mahler and observed by
12 Mr. Mahler.

13 For whatever the reasons were, some codefendants
14 were judged not guilty in the prior trial. That is of
15 no consequence in this trial, and counsel and Mr. Mahler
16 will be instructed that under no circumstances is there to
17 be any reference in this case, either in opening statement
18 or during the trial, directly or indirectly, by expression
19 or innuendo, to the acquittal.

20 MR. BLACKSTONE: Your Honor, we have not been
21 given an opportunity to address that legal point. That is
22 a question of law.

23 THE COURT: Just a minute, Mr. Blackstone. As
24 of this moment, the Government has made out a prima facie
25 case, and I will allow you to address that point if you

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2 utilize either 19A or 19B in voir dire. That is not my
3 idea of a voir dire.

4 Any adult who doesn't know they are ill, and
5 wants to get some assistance from the Court because of some
6 inconvenience as a juror to my mind doesn't live in these
7 environs.

8 What else?

9 MR. BLACKSTONE: I haven't organized myself to
10 the point of presenting my arguments on the use of prior
11 acquittal.

12 THE COURT: Why don't you do that and let me know
13 tomorrow what your point is.

14 MR. BLACKSTONE: Thank you, your Honor.

15 MR. LEIGHTON: I have one preliminary matter,
16 your Honor. I believe yesterday the Government notified
17 your Honor as well as the defendants that there was a
18 superseding indictment in this matter. Mr. Mahler and
19 myself went over the superseding indictment yesterday.
20 On behalf of the defendant, the defendant is making an
21 application at this time for an adjournment, your Honor,
22 of approximately 30 days in order to address motions to
23 the new indictment and to prepare again and anew the
24 defendant's opening. Because now we have a trial with a
25 brand new indictment. The defendant has spent numerous

1 gwbk

2 hours preparing an opening, preparing court strategy, and
3 all that was done toward the old indictment. The new
4 indictment alleges twelve different counts, your Honor --

5 THE COURT: I know what it alleges and the
6 statement that you are making is utter nonsense. The
7 superseding indictment is a streamlined version of the old
8 indictment so as to make perfectly clear what was already
9 clear but prolix in the old indictment. There was
10 absolutely nothing new in the thing at all, and any
11 application of this sort is of a dilatory character.

12 MR. LEIGHTON: The twelve counts in the
13 indictment, the factual content, are totally different
14 from the first nine counts in the old indictment.

15 THE COURT: Then you haven't prepared yourself
16 very well on the case.

17 MR. LEIGHTON: We are prepared as to the facts.
18 But in the opening statements we were going to allude to
19 each count, showing how we were going to disprove each of
20 the allegations of the Government.

21 THE COURT: This is now Thursday at 10:15 and I
22 am positive by next Tuesday at 9:30 or 12 o'clock, more
23 appropriately, probably, when you will be making your
24 opening statement you would have had so much time that no
25 reasonable person could conceivably think of anything more



United States Department of Justice

A 42

UNITED STATES ATTORNEY

SOUTHERN DISTRICT OF NEW YORK

ONE ST. ANDREW'S PLAZA

NEW YORK, NEW YORK 10007

ADDRESS REPLY TO
"UNITED STATES ATTORNEY"
AND REFER TO
INITIALS AND NUMBER

PRC:jd

10-3625

October 8, 1977

Honorable Milton Pollack
United States District Judge
United States Courthouse
Foley Square
New York, New York

Re: United States v. Mahler
S. 76 Cr. 1047

Dear Judge Pollack:

The Government has just been served by Mr. Mahler with a new motion for a continuance. This motion is a ruse and a fraud on the Court. Although Mr. Mahler has submitted this motion in his "pro se" guise, the motion gives every evidence of having been prepared by an unidentified private attorney who doubtless seeks to become the beneficiary of any such continuance.*

An oral motion for a continuance based on the identical grounds was denied by Your Honor when it was made last week by Robert Leighton, Esq., Mr. Mahler's court-appointed Criminal Justice Act attorney. As long as Mr. Mahler is represented at taxpayer's expense by Mr. Leighton, it is indeed a fraud on the Court for Mr. Mahler to arrange for a private attorney to prepare legal documents and then for Mr. Mahler to submit these attorney-prepared motions to the Court allegedly as "pro se."

* Clearly, this private attorney is not Mr. James La Rossa, who informed the Government yesterday that he was sending a letter to this Court expressly refuting Mahler's claims that La Rossa had been retained to represent him.



In addition to being fraudulent, Mr. Mahler's motion is meritless. The superseding indictment does not change in any degree or manner the allegations against Mr. Mahler. The superseding indictment was sought solely to narrow and simplify the case for the jury. The original indictment names ten defendants and would have been cumbersome in light of the fact that only two defendants remain for the retrial. The alleged securities swindle is the same and Mahler's alleged role in it is the same.

Mahler's present motion complains that the alleged jurisdictional acts are different in the superseding indictment. To be sure, jurisdictional acts from the first indictment that referred to mailings or phone calls by other defendants who are no longer part of the case have been eliminated. There is, however, not even one jurisdictional act in the superseding indictment that was not either expressly in the original indictment or explicitly the subject of testimonial and documentary evidence at the first trial. After 7,000 pages of "discovery" in the first trial, Mahler's claim of "surprise" is ludicrous.

Mr. Mahler also questions the timing of the superseding indictment. He neglects to point out that the guilty pleas of three of the five defendants scheduled for the retrial were not finalized until Wednesday, September 28, 1977. It was not feasible or worthwhile to supersede for the five defendants. Only after Mr. Lovejoy pleaded guilty on September 28, 1977 did a superseding indictment become feasible, and just such a simplified indictment was returned within one week of Mr. Lovejoy's plea.

Under the Speedy Trial Rules, this case would have gone to trial in July, 1977 had not Mahler and the other defendants (at a hearing in which Mahler personally participated) asked this Court to adjourn the trial to early October in the interests of justice. Now, as the actual start of trial has neared, Mahler has tried one excuse after another to get a continuance and thereby

Honorable Milton Pollack

-3-

October 8, 1977

delay justice. Your Honor has already ruled that the trial should proceed expeditiously. There is nothing in the present alleged "pro se" motion which merits a reconsideration of that ruling.

Respectfully submitted,

ROBERT B. FISKE, JR.
United States Attorney

By:

Pamela R. Chepiga
PAMELA R. CHEPIGA
Assistant United States Attorney
Telephone: (212) 791-1926

cc: David Blackstone
401 Broadway
New York, New York 10013

Robert Leighton
15 Park Row
New York, New York

Arnold Nelson Mahler
11 Ponderosa Drive
Melville, Long Island, New York

1 hpe

2 45

2 UNITED STATES DISTRICT COURT

3 SOUTHERN DISTRICT OF NEW YORK

4 -----x

5 UNITED STATES OF AMERICA, :

6 Plaintiff, :

7 -against- :

76 Cr. 1047

8 ARNOLD NELSON MAHLER, a/k/a :

9 ARNOLD NELSON and DEAN H. UBBEN, :

10 Defendants. :

-----x

11 October 11, 1977

12 9:45 a.m.

13 BEFORE:

14 HON. MILTON POLLACK,

15 District Judge

16 APPEARANCES:

17 ROBERT B. FISKE, JR., ESQ.

18 United States Attorney for the
Southern District of New York

19 BY: JED S. RAKOFF, ESQ.

PAMELA CHEPIGA, ESQ.

Assistant United States Attorneys

20 JAMES E. SHARP, ESQ.

21 RICHARD JANIS, ESQ.

Attorneys for Defendant Arnold Nelson Mahler

22 DAVID BLACKSTONE, ESQ.

23 Attorney for Defendant Dean H. Ubben.

24 Also Present: (In the robing room only.)

25 ROBERT LEIGHTON, ESQ.

(In the robing room.)

MR. LEIGHTON: Your Honor, I was asked this morning by defendant Mahler to make an application before your Honor to allow him to substitute Mr. James Sharp and Mr. Richard Janis as counsel for myself at today's trial.

I have conferred with Mr. Sharp and Mr. Janis and they have told me they are ready to proceed with the trial.

THE COURT: First of all, have we got the full name, address and telephone number of each of these gentlemen?

MR. SHARP: Good morning, your Honor. My name is James. E. Sharp and my partner, N. Richard Janis. Our law firm is at 1220 19th Street, Washington, D.C. The phone number is 202-659-2400.

THE COURT: Are you fully ready to try this case?

MR. JANIS: Yes, your Honor, we are prepared to go ahead.

THE COURT: Where is Mr. Mahler?

Mr. Mahler, are you satisfied to have Mr. Sharp take on the trial this morning of this case?

DEFENDANT MAHLER: Yes, I am, your Honor.

THE COURT: You have no reservations whatsoever in mind?

1 hpe (In open court.)

2 THE COURT: Ladies and gentlemen, I am going to
3 ask you to accompany the Clerk into the jury room so that
4 you will know where it is that you assemble when you come
5 and go from the courtroom.

6 You are now on the 13th floor, and the Clerk will
7 show you how to get from the elevators into the jury room.
8 I am now excusing you until 2 o'clock when we will hear the
9 opening addresses by the lawyers. You may be excused to go
10 out with the clerk.

11 (Jury left the courtroom.)

12 THE COURT: I think Mr. Sharp last week, before
13 you joined us, there was a discussion as to whether or not
14 there could permissibly be in the course of any part of the
15 trial, the openings or the trial itself or the summations, mention
16 to acquittals of others, and I made the hard and fast rule
17 that there is to be no mention directly or indirectly by
18 innuendo or otherwise by anyone, whether an attorney or wit-
19 ness, of those circumstances and that each witness called by
20 each individual is to be separately and individually instruc-
21 ted on the subject.

22 If there is a disregard of the instructions, you
23 may tell those witnesses that if they disregard those instruc-
24 tions with knowledge thereof, that that might interfere with
25 the regular proper order of the trial of the case and conse-

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2 quently be visited with some consequences.

3 MR. SHARP: Yes, your Honor.

4 THE COURT: I think Mr. Blackstone has had a
5 case on trial with me, so I state to you now in this court,
6 we do not argue objections. You may state the objection and
7 the legal ground therefor, such as hearsay, relevancy or
8 materiality and stop there.

9 If there is any argument or explanation required,
10 I will ask for it and you send up a memorandum which is marked
11 as a Court exhibit. If I don't ask for it and you still
12 feel you want to call to my attention something that should
13 not be overlooked in connection with the objection, you send
14 up a memo and we hold up the proceedings while I examine it,
15 mark it as a Court exhibit and give you an immediate ruling.

16 On the requests to charge, I shall expect
17 requests by all parties by the close of -- is the Government
18 ready with those requests or substantially so now? Could you
19 present your requests by the end of this week?

20 MR. RAKOFF: I'm sure we could do it by Monday,
21 your Honor.

22 THE COURT: All right. The Government will fur-
23 nish its requests by Monday and defendants will supply their
24 requests at the close of Government's case, prior or at the
25 close of the Government's case. I should call to your atten-

roles. Virtually any one of those would support their conviction of this fraud.

In the coming week or so, it ~~would~~^{will} be our endeavor to present to you the proof of each and every one of those charges.

Thank you very much.

THE COURT: Mr. Sharp?

MR. SHARP: May it please the Court, ladies and gentlemen of the jury:

My name is Jim Sharp and I represent Mr. Mahler and Mr. Janis is my partner here. I am going to be somewhat brief, as brief as I can.

This is simply a time where, in a trial, a man has not come on the stand and told you what he has to prove, what Mr. Rakoff has done. As you know, from just conducting your daily affairs, to every story there are two sides. We can't just listen to one side. You always find, do you not, that there is a second side, and I am about to tell you the second side as it relates to one man, and that is Mr. Mahler.

Mr. Mahler -- I and Mr. Janise represent Mr. Mahler in this case. During the course of this trial, you are going to hear that Mahler was indeed the principal in a business, a number of businesses, one of them was called

Acquisitions and Investors. That was a company that had as part of its business the wedding of corporate shells and private funds. Actually, its intent in those situations was to reorganize a company out of a private company and a corporate shell.

As Mr. Rakoff has indicated, you will hear from the witnesses for the defense, too, that in 1972, and these events take place in 1972 and 1973, Mr. Mahler was, in fact, engaged in that business. He met a man by the name of Ted Zucker. Ted Zucker, please remember that name. Ted Zucker himself was involved in that business and was quite knowledgeable about that type of business. He became somewhat attracted to Mr. Mahler in the sense that he was, in fact, somewhat competent in dealing in the buying and selling of businesses and the merging of businesses.

Mr. Mahler, during that period of time, wanted to slow down. He was a young man who was doing well at the time. Mr. Zucker wanted, in effect, to join him and Mr. Mahler took him in as an assistant. He made an arrangement with him. He told him, he said, "For business that you generate, I will give you half of it, and I will pay the overhead and the expenses, Mr. Zucker."

You will hear that Mr. Zucker had a friend, a friend that was unknown to Mr. Mahler. His friend's name

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2 was Mr. Kulekofsky, a much younger man than both Mr. Mahler
3 or Mr. Zucker. Mr. Kulekofsky was a single man, and he owned
4 a business, a business called Kule Resources Limited. He
5 was at times known, this young man, as a Mr. Kule, Mr. Kule,
6 K-u-l-e. That was the name of his business, Kule Resources.
7 You are going to hear that he was in the business of buying
8 and selling businesses, and he and Mr. Zucker were old
9 friends.

10 Ladies and gentlemen of the jury: You are
11 going to hear that the government's case stands or falls on
12 the testimony of two people, two people. A man named Zucker
13 and a man named Kulekofsky, these two friends.

14 When Mr. Mahler put Mr. Zucker in, he was, in
15 effect, bringing in Mr. Kulekofsky too because Zucker and
16 Kulekofsky were friends. You are going to hear they were
17 friends to the extent that once Mr. Mahler brought Mr. Zucker
18 in, Mr. Zucker brought in Mr. Kulekofsky's fiancée, a girl
19 who later married Mr. Kulekofsky, to work in Mr. Mahler's
20 office. You are going to hear Mr. Kulekofsky started coming
21 by the office in the morning because his girlfriend worked
22 there. He was in and out of the business at all hours. He
23 would come there in the morning -- this is Mr. Kulekofsky.

24 You are going to hear that Mr. Mahler, in 1972,
25 with Mr. Zucker, began to take some time off and be with his

ewds 9

family during 1972 and in the summer. We will tell you where he was. You will hear, in the fall of 1972 he and his family went to Europe for a while, they were back and forth in and out of the trial. Mr. Zucker had a project. His project was Bell-Ko, not unknown to Mr. Mahler. The Bell-Ko project was simply this, and you will hear this:

Bell-Ko was, in fact, a corporate shell. It had about \$86 in assets. It had one substantial asset, though, it was a public company. It could trade to the public. There was a private company, a private company, that Mr. Mahler had been introduced to by Mr. Ubben. That company was called International Industries. That later became Industries International, but at that time that is what it was. It was a Colorado company, and their product was this dry flow pump which you will hear about. Mr. Mahler in fact, knew the mechanics of wedding or merging a public shell and a private corporation together. That takes some expertise. He would charge for that \$25,000 in order to do that for two groups that wanted to wed. His company would also take some of the stock of the surviving company.

Mr. Zucker, you are going to hear, met throughout the fall with various principals involved in the Bell-Ko and Industries International deal. He met with representatives of the people involved in making this pump. He met with

ewds 10

Mr. Ubben and he involved this young man, his friend, Mr. Kulekofsky, because Kulekofsky wanted to get in this type of thing. This was, in fact, his business. He felt that he was much younger, and it appeared very lucrative.

Ladies and gentlemen of the jury, you are going to hear that he knew a man named Wellens. Not Mr. Mahler but Mr. Kulekofsky knew a man named Wellens up here that Mr. Rakoff has identified to you. Mr. Wellens was a broker.

You are going to hear that throughout the fall of 1972 and into 1973, Mr. Zucker and Mr. Kulekofsky put together this merger between the corporate shell and the private company. You are going to hear that at times they reported to Mr. Mahler and everything was going very smoothly. The fact of the matter is this: Mr. Kulekofsky and Mr. Zucker were preparing to line their pockets when they successfully merged these two.

Mr. Rakoff has indicated that Mr. Mahler arranged this; never said he actually paid this to anybody; always he arranged. In the wings, he directed.

You are going to find who was actually doing business with Mr. Zucker, Mr. Mahler or Mr. Kulekofsky.

Ladies and gentlemen of the jury, you are going to find that in March of 1973, March 7th, a very important day, Mr. Zucker will tell you on the stand, this

1 ewds 11

2 the government witness, he is the man who has made a deal
3 with the government, he has never been sentenced in this
4 case. He pleaded guilty. He has never been sentenced. He
5 pled over a year ago. He has never been sentenced. He made
6 a deal with the government. He testified against Mr. Mahler.
7 He is out on the street now.

8 When he comes in here, he will come in from
9 off the street, not from jail. He is a businessman, he
10 lives here.

11 Mr. Kulekofsky, the same thing. You will see,
12 Mr. Kulekofsky, you are going to hear also made his deal.
13 You see, when this thing began to fold, when they began to
14 get discovery, they had to do something. Number one, while
15 the boss was away, Mr. Zucker had messed things up to the
16 point where the SEC was looking into this merger. On March
17 the 7th, a call came from P.J. Stanton, this little brokerage
18 firm. They called to report that the Securities & Exchange
19 Commission had come to their offices and were asking
20 questions.

21 Who did ^{you} call? Mr. Mahler? You better find
22 out. No, he called Kulekofsky. He said, "The SEC is up
23 here, they are asking question. What do I do?"

24 Kulekofsky then makes a phone call. Does he
25 call Mahler -- this is the brains, this is the man who has

1 ewds 12

2 been identified as the brains.

3 You are going to hear during the course of the
4 defense in this case thathe called Zucker. He said they got
5 ahold of Kulekofsky and they got ahold of Zucker. Zucker
6 is going to tell you, he is the government witness, he will
7 say at that point, frankly, "I didn't believe that we had
8 done anything illegal, at that point."

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(Continued on next page)

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1 hpds 1

2 So, who did he call? His boss? No. He
3 called the lawyer, Herman. He said, "Let me tell you
4 what's happened, and you tell me if there is any problem
5 with it."

6 You are going to hear that he had to hang up
7 the phone, the lawyer did, and think about it and then
8 call back and say, "Yes."

9 You are going to hear that night on March 7,
10 a meeting was held, Mr. Zucker and Mr. Kulekofsky got to-
11 gether. What do we do?

12 Ladies and gentlemen of the jury, a plan was
13 devised. Mr. Mahler's name and Mr. Zucker's name were taken
14 off of various cards that had been filed in order to set
15 up Anted Vending, and they didn't want Mr. Mahler to know
16 how it was messed up.

17 Three weeks later, another meeting took place,
18 a man named Dutzar and Sichel. You are going to hear at
19 that meeting three weeks later, that they had to work out
20 a way whereby Sichel could explain how he knew people at
21 the brokerage firm which handled this purchase for Anted.
22 That's complicated.

23 Ladies and gentlemen, there was a meeting ik
24 New York City in which Mr. Mahler was not present. There
25 was a man named Dutzar and Sichel. The SEC continued to

hpds 2

probe and probe and probe and pretty soon this thing got hot. Mr. Kulekofsky was called to the Securites & Exchange Commission and asked to testify.

Later, in 1976, when it got so intense so intense that he had to save himself, he and Mr. Zucker, then he decided it was all Mahler's fault, Mahler is the name, all we did is do his bidding. He directed, he arranged. We did it but it was at his insistance. Yes, we were to make money, good money too, yes, it was, in fact, his business, but you see, he was the grand designer.

Mr. Zucker was the second one to come in. Kulekofsky's lawyers worked out this arrangement. The government promised Mr. Kulekofsky that he would not be indicted, he would not be charged. This is in June of '76, and if he would come in and testify as to his new story, the new story, that Mahler was the man who pulled all the strings. Here is what they would do to him. They would not prosecute but for five years he will have to be on probation in the sense that you can't go into the brokerage business for five years. That was in 1976 when this deal was struck and you are going to hear Kulekofsky's lawyers got to agree his probation would start in March of 1973, at the time they were having the secret meetings trying to develop the cover story and Zucker then was told he would have to plead

1 guilty.

2
3 How is that these two men who were so involved
4 were able to get the government to do that? Both of them
5 had the same law firm.

6 Ladies and gentlemen of the jury, you are
7 going to hear by virtue of what they had done, they couldn't
8 hide it from the SEC or from Mr. Mahler. They were like
9 a couple of children who were playing with matches and
10 started a fire. Once that was done, it was to tell Mahler
11 what was done, but they couldn't do it. They wanted to
12 put the fire out themselves. But, what happened was, they
13 burned down the barn. When they burned down the barn, they
14 had to start looking, either to fess up they were responsible
15 for the fire or to pin it on somebody else.

16 It's very easy to get the government to buy
17 the fact that Mahler is the culprit. Twelve years ago
18 Mahler was convicted in this courthouse and Mahler becomes
19 the culprit. It's like going and telling mom we had nothing
20 to do with the fire, but Billy across the street who twelve
21 years ago set one of these fires is responsible. It's not
22 hard to say.

23 Ladies and gentlemen of the jury, Zucker is
24 here like a dancing bear. You feed him after he does his
25 dance. He is sentenced only after he testifies.

ewds 6

my own investigation this evening. Can we discuss this tomorrow morning?

THE COURT: Anytime. You have no problem about that at all.

MR. RAKOFF: The only other matter is with respect to Mr. Kulekofsky's testimony. Last time, one of the attorneys, not anyone presently here, asked Mr. Kulekofsky were you involved in the Imperial stock swindle case, and I -- being taken by surprise, I didn't object. I learned after the trial that Mr. Kulekofsky testified as a peripheral witness, not as a co-conspirator, not as anyone who --

THE COURT: Then, a proper answer from Mr. Kulekofsky would have been, no. If he was in a collateral matter, that would have concluded that inquiry. I am not going to sit up here and give declaratory judgments on that. Anybody who violates the rules will find the ax will fall on them. I don't see any reason why a question like that can't be asked and if what you say is the fact, his answer is appropriately in the negative.

MR. RAKOFF: He thought by that --

THE COURT: I don't care what he thought. The words are very simple.

I think we should spend a little time, the rest of this afternoon on this subject of exhibits. For

1 gwbr

Kulekofsky-direct

162

2 Securities, is that right?

3 A Yes.

4 Q And that was in the name Acquisitions and
5 Investors?

6 A Yes.

7 Q And that was really Mr. Mahler's company?

8 A Yes.

9 Q And that was then sold to -- supposed to be
10 sold to P.J. Stanton?

11 A Correct.

12 Q And was in fact a substantial portion of that
13 sold to P.J. Stanton?

14 A Yes.

15 Q And that was a pre-arranged transaction, was
16 it not?

17 A Yes.

18 Q And P.J. Stanton then gave checks to Mr. Mahler
19 for the proceeds, is that right?

20 A No.

21 Q I am sorry. On the Saxon Securities?

22 A Yes.

23 Q That is where it was, up here?

24 THE COURT: Where what was up here?

25 Q Where the 20,000 shares of Industries

1 hpbr

Kulekofsky-cross

2 Q That agreement, that 50,000 share agreement,
3 did Mr. Mahler sign that agreement?

4 A No.

5 Q Did Mr. Mahler ratify the agreement to your
6 knowledge?

7 A No.

8 Q Did he have anything to do with that agree-
9 ment?

10 A No.

11 Q After the Coachman meeting, in which you
12 provided brokers there and demonstration was put on,
13 you told Mr. Lovejoy he should file a Form 10?

14 A At the meeting, yes.

15 Q And file with the Securities & Exchange
16 Commission?

17 A Yes.

18 Q That was never done, was it?

19 A No, it wasn't.

20 Q After the Coachman meeting I believe you
21 indicated you told Zucker that you could sell 100,000
22 shares of that stock, I think some time in February of
23 '73, is that correct?

24 A That I could sell it in February?

25 Q No, that you could sell 100,000 shares of that

1 hpbr 2 Kulekofsky-cross

2 in light of what happened at the Coachman meeting?

3 A Yes.

4 Q You were enthusiastic?

5 A Yes, I was.

6 Q You were going to make some money, weren't
7 you?

8 A Yes.

9 Q That's why you were keen to share money with
10 Mr. Wellens, wasn't it, because you wanted the money?

11 A Yes.

12 Q Badly?

13 A Pardone me?

14 Q Badly?

15 A Yes.

16 Q Zucker in February of 1973 offered to give
17 you \$5,000 to sell certain stock, isn't that correct?

18 A Yes.

19 Q Did you agree to do it?

20 A Yes.

21 Q For the \$5,000?

22 A Yes.

23 Q At about that time, I believe on direct
24 examination you also indicated that he, Zucker, and Mahler,
25 you said, had arranged to get free trading stock for Ubben?

1 hpbr 3 Kulekofsky-cross

2 A Correct.

3 Q Zucker told you that, is that right?

4 A Yes.

5 Q Not Mahler. Zucker told you that in February
6 of 1973?

7 A Yes.

8 Q On the first day of March you got a call from
9 P.J. Stanton wanting stock that was in demand, isn't that
10 right?

11 A Yes.

12 Q And you called to get access to some stock,
13 didn't you?

14 A Yes.

15 Q You called Zucker, didn't you?

16 A I don't know. I don't know who you spoke to.

17 Q On your direct testimony you say Zucker.

18 A I said I think I may have talked to Mr.
19 Zucker.

20 Q Would you like to say now it was Mr. Mahler?

21 A I said I may have spoken to either one.
22 I believe it was Zucker because I remember him saying
23 something to the effect that he will have to get back to
24 me.

25 Q Zucker agreed on the 1st of March to supply

1 hpbr 18 Kulekofsky-cross

2 the authority to trade the corporate name,

3 Q Stating who has the authority to trade in
4 a corporate name.

5 THE COURT: Mr. Sharp, I know it's uncon-
6 scious, but --

7 MR. SHARP: I am sorry, I repeated it. It is
8 a bad habit.

9 THE COURT: Every time the witness says some-
10 tuing, you say the same thing.

11 MR. SHARP: I am sorry, your Honor. That's
12 unconscious.

13 Q Mr. Kulekofsky, you recall the card, do you
14 not?

15 A Yes.

16 Q It in fact has Ted Zucker's name on it, does
17 it not?

18 A Yes, it does.

19 Q To your knowledge, was that in fact filed and
20 substituted for the original card?

21 A Yes.

22 Q And who filed it?

23 A I don't know what you mean by filed it.

24 Q What did you do with it after you typed it?

25 A I brought it over to Mr. Mahler and Mr. Zucker's

1 hpds

Wellens - cross

2 Q So, what you learned you learned from
3 Mr. Kulekofsky?

4 A What I learned about Arnie and Teddy, Lou
5 told me.

6 Q How long had you known Lou?

7 A Oh, a year or so.

8 Q Did you consider him a friend during this
9 period of time?

10 A Yes.

11 Q You indicate you made a deal with Mr. Ubben
12 to get 20,000 shares of free trading stock. You told your
13 friend, Mr. Kulekofsky, you only got ten, isn't that right?

14 A That's right.

15 Q So you hadn't told him quite everything, had
16 you?

17 A That's right.

18 Q You had a lot of representations to Mr. Kulckofsky
19 about Mr. Mahler and other people. Did you trust Mr. Kulekofsky
20 completely?

21 A Did I?

22 Q Did you trust Mr. Kulekofsky?

23 A I accepted his word.

24 Q Did Arnold Mahler ever himself promise you
25 any stock?

hpds

Wellens - cross

A No.

Q Did he ever give you any stock?

A No.

Q Did he ever promise you any money?

A No.

Q Did he ever give you any money?

A No.

MR. SHARP: Thank you.

CROSS-EXAMINATION

BY MR. BLACKSTONE:

Q Mr. Wellens, in connection with Industries International, there came a time when Mr. Kulekofsky went to you and told you that Mr. Mahler and Mr. Zucker had completed another merger and whether you would agree to go into the pink sheets.

A I don't understand. What period of time was this?

Q In November or December of 1972.

A He just told me that they were working at that time on another merger. He didn't tell me when it was completed and he asked me if my firm would go on the sheets and I said I don't know, I would find out.

Q Did Mr. Kulekofsky tell you the he had received a thousand dollars from Mr. Zucker and that if you would

1 hpds

Wellens - cross

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310

2 raise any money. We had no intentions of raising money.

3 Q Thank you.

4 But, my question to you is I know it is your testi-
5 mony that you say it was a payoff, but my question is: At
6 that meeting did Kulekofsky and you discuss with these
7 individuals raising funds for this company?

8 A Probably. I don't remember though.

9 Q Probably?

10 A It's probable. But we had no intention of
11 raising money.

12 Q So you were duping these people, is that right?

13 A Wrong.

14 Q Mr. Lovejoy and Ubben were talking to you and
15 you said possibly --

16 THE COURT: Just ask your questions. Don't
17 get argumentative.

18 A We weren't duping anybody.

19 Q I don't have a question, but you may answer.

20 A We weren't duping anybody.

21 Q Was it as a result of that meeting where
22 Mr. Lovejoy discussed the pump, the Dri-Flo pump and the
23 company that you decided that somehow or another, you would
24 want to get some stock in that company?

25 A We decided for going on the sheets we were

1 hpds

Wellens - cross A

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311

2 going to ask for money and stock.

3 Q Who is "we"?

4 A Lou Kulekofsky and myself.

5 Q And as a result of that decision, did you again
6 go to a second meeting at Mr. Kulekofsky's office where
7 Mr. Ubben and Mr. Lovejoy were present?

8 A There were a lot of meetings, I was I Lou's
9 office maybe every day in the week. It was only a few blocks.
10 And I met with Dean Ubben quite a few times.

11 Q I am talking about a meeting at Mr. Kulekofsky's
12 office in connection with Industries International where
13 Mr. Lovejoy and Mr. Ubben were present.

14 A Yes, there was a meeting.

15 Q A second meeting?

16 A It might have been a third meeting, I'm not
17 sure.

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21 (Continued on next page)
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1 hpds

B. Herman - cross

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2 received in evidence: Government Exhibits 612, 613, '39, 318,
3 75K, 127, 288, 288A, 350, 4, 249, 249A, 334, 335, 729, 741,
4 328, 333, 355, 356, 622E, 75H, 360, 364, 365, 510A, 366,
5 362, 363, 698, 561, 562, 3551 received in evidence.)

6 (Pause)

7 (Full jury present)

8 THE COURT: I have a memorandum from counsel.

9 That is Court's Exhibit 3.

10 Show it to the government.

xxx 11

(Court's Exhibit 3 marked)

12 THE COURT: Proceed with the examination.

13 MR. JANIS: Thank you, your Honor.

14 CROSS-EXAMINATION

15 BY MR. JANIS:

16 Q Good morning, Mr. Herman, how are you?

17 A Fine, thank you.

18 Q Mr. Herman, when you testified yesterday,
19 you told the ladies and gentlemen of the jury about the
20 initial contact you had concerning Acquisition and Investors.

21 Do you recall that, sir?

22 A Yes, I do.

23 Q Is it correct that the initial contact came
24 from your brother, Mr. Harold Herman?

25 A Yes.

1 hpds

B. Herman - cross

A 70

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2 Q He advised you, did he not, that someone from
3 Acquisition and Investors wanted to sell some stock?

4 A That is correct.

5 Q And he also advised you, did he not, that
6 as a favor to Mr. Harold Herman this person was going to
7 deal with your firm?

8 A That is right.

9 Q That was a favor to you, is that correct?

10 A That is correct.

11 Q When you spoke to your brother the first time,
12 he told you, did he not, that the stock involved was
13 restriced stock?

14 A Yes.

15 Q Again, would you tell us exactly what you
16 understood restricted stock to be?

17 A Restricted stock or investment stock is a
18 stock that is restricted in its ability to be sold in the
19 open marketplace in a normal transaction.

20 Q In other words, restricted stock is the
21 opposite of freely tradable stock, is that correct?

22 A Yes.

23 Q You were aware of, were you not, Mr. Herman,
24 that under certain circumstances restricted stock could,
25 in fact, be sold to the public?

1 hpds

B. Herman - cross

2 A I was not.

3 Q You were aware if additional steps were taken
4 to free-up the restricted stock, it could be sold to the
5 public, is that correct?

6 A Yes.

7 Q Those steps would include, for example, an
8 opinion letter from an attorney stating that this restricted
9 stock qualified for an exemption under the Rule 133 of the
10 Securites & Exchange Commission, is that correct?

11 A That is correct.

12 Q Is it also correct, sir, that in order to
13 free-up this stock, to make it freely tradable, it would have
14 to be sent to a transfer agent?

15 A Yes.

16 Q And you were aware of that, is that right?

17 A Yes.

18 Q And when the stock was sent to the transfer
19 agent, also to be sent to the transfer agent was other in-
20 formation including the letter from the attorney, is that
21 right?

22 A Yes.

23 Q And once those procedures are followed, then
24 the transfer agent is entitled to remove the legend from the
25 stock and it becomes freely tradable?

1 A It is my understanding that is his designation
2
3 to make at that time.

4 Q And if he makes that decision, he can remove
5 the legend and the stock becomes freely tradable, is that
6 right, sir?

7 A Yes.

8 Q After the initial contact you received from
9 your brother, Mr. Harold Herman, you in fact sent some forms
10 to Acquisitions and Investors?

11 A That is correct.

12 Q Those forms were returned?

13 A That is correct.

14 Q At the time you sent those forms, you knew that
15 Mr. Arnold Nelson was the principal and owner of Acquisitions
16 and Investors, did you not?

17 A I had so been informed.

18 Q You spoke to Mr. Nelson as well, did you not?

19 A I might have called him on the phone to thank
20 him.

21 Q And Mr. Nelson advised you, did he not, that
22 the stock that he was sending you was restricted stock?

23 A I don't believe we had any discussion as to
24 its being restricted, freed or any other type of discussion
25 regarding the stock shares at that particular time.

1 hpds

B. Herman - cross

A 73

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2 Q Let me ask you this then.

3 At the time that you received the shares in the mail,
4 it was obvious to you, was it not, that this was restricted
5 stock?

6 A I can't answer the question inasmuch as I never
7 in fact recall receiving such shares of stock directly.

8 Q Did you ever look at the shares?

9 A No, I did not.

10 Q Did you have any occasion to believe that there
11 was not a legend on the stock?

12 A No.

13 Q In fact, you were sure, were you not, there
14 was a legend on the stock, that it had been restricted?

15 A I had been told there was a legend on it and
16 assumed it was restricted.

17 Q After the stock was received and the informa-
18 tion at Saxon Securities requested was returned to you,
19 you in fact turned the stock over to Mr. Jablons, did you
20 not?

21 A I never saw the certificate nor, to my knowl-
22 edge, did I receive the certificate itself representing
23 the shares in question.

24 Q Did the information and the shares go to
25 Mr. Jablons?

1 A It may have been delivered to Mr. Jablons.
2
3 It may have gone to the transfer agent. I have no direct
4 knowledge on this point.

5 Q Mr. Herman, when the stock came to Saxon
6 Securites, who would have dealt with it?

7 A The cashier and Mr. Jablons.

8 Q Who was Mr. Jablons?

9 A He was the president of Saxon Securities.

10 Q Am I correct in stating, sir, when the stock
11 certificates came into Mr. Jablons and the cashier, it was
12 their duty to make sure everything was done properly, to
13 look over the certificates and before sending the information
14 on to the transfer agent, to insure everything was done in
15 accordance with law, is that correct, sir?

16 A Absolutely correct.

17 Q To the best of your knowledge, Mr. Jablons
18 and the cashier did take such actions, is that right?

19 THE COURT: He just got through telling you
20 a half a dozen times he doesn't know. What's the use of
21 asking questions of this kind?

22 Q Did you speak to Mr. Jablons or the cashier
23 about that?

24 A Yes.

25 Q Did they tell you that they had taken those

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actions?

A I'm sorry, which action, counselor?

Q That they had gone through the proper procedure followed the proper regulations in order to insure that everything was in order before sending the material to the transfer agent.

A It was my understanding if they were satisfied, they would take the necessary steps required.

Q At the time Mr. Mahler contacted you, he never asked you to sell these shares with the legend on it or to by-pass any of the requirements in order to free-up the stock, did he?

A No.

Q After the stock was sent to Saxon, am I correct in stating that Saxon sent the shares on to the transfer agent so that the certificates could be freed-up, is that right?

A Counselor, I have no direct knowledge as to whether Saxon Securities received that certificate directly from Mr. Nelson or it came to the firm from the transfer agent.

Q Did there come a time when the materials were sent on to the transfer agent?

A Such materials as required of Saxon Securities

1 hpds

B. Herman - cross

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2 were sent on to the transfer agent.

3 Q Did that also include an opinion letter?

4 A I can't answer that. I did not handle that.

5 If required, perhaps.

6 Q You have no information about an opinion
7 letter from your brother, sent on with the material?

8 A By whom?

9 Q After it had been sent to Saxon Securities.

10 A Counselor, it is my understanding that the
11 opinion letter was sent directly to the transfer agent by
12 the attorney for the firm.

13 Q Who was your attorney?

14 A Harold Herman.

15 Q He was your brother, is that correct?

16 A Yes, still is.

17 Q He still is. I'm glad that's true.

18 THE COURT: I don't think that's necessary.
19 I don't want any comments.

20 Q Mr. Herman, you knew, in fact, that your
21 brother had sent a letter either directly or indirectly to
22 the transfer agent stating that these shares of stock
23 qualified for an exemption under Rule 133, is that right,
24 sir?

25 A I've been informed by him that such letter was

1 hpds

B. Herman - cross

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2 sent to the transfer agent.

3 Q You had no reason to doubt that it wasn't,
4 did you?

5 A No.

6 Q In fact, you knew your brother to be an expert
7 in Securities and Exchange law, is that correct?

8 A I have no comment on that point. I'm not in
9 a position to judge his expertise.

10 Q Did there come a time, sir, when the certifi-
11 cates that we are talking about, the Acquisitions and
12 Investors had sent to Saxon Securities were received back
13 from the transfer agent without the legend on?

14 A Yes.

15 Q It was only then that the sale of securities
16 began, is that correct?

17 A I can't answer that question.

18 Q Were the securities placed for sale prior to
19 the time that they were received back without the legend
20 on them?

21 A I can't answer that either.

22 Q To the best of your knowledge, was that done?

23 A I can't answer that question, counselor.

24 Q To the best of your knowledge, sir, were these
25 shares sold over about the course of one week?

A Yes.

Q And it is true, is it not, that Mr. Mahler never told you or, to the best of your knowledge, anyone else at Saxon Securities that the share to be sold for Acquisitions and Investors were to be sold to any one particular brokerage firm?

A That is correct.

Q He never named to you P.J. Stanton?

A No.

Q He never named to you any other firm?

A He never named any firm to me personally.

Q In fact, the stock was sold to a number of firms, is that not correct, sir?

A To be exact, I believe there were three.

MR.JANIS: Your Honor, may I have Government's Exhibit 284-C, please.

(Handed)

Q Mr. Herman, would you please take a look at Government's Exhibit 284-C and again tell the ladies and gentlemen of the jury what that exhibit is, please?

A Exhibit 284-C consists of copies of sale tickets of Saxon Securities Corp.

Q Do these tickets indicate who those sales were made on behalf of?

1 hpds

B. Herman - cross

350

2 A Yes, Industries International shares.

3 Q Who owned the shares?

4 A Acquisitions and Investors?

5 Q Do those tickets also indicate to what brokers
6 the shares were sold?

7 A Yes.

8 Q Could you read each of the tickets and tell us
9 what brokers those were, please?

10 A On the 2nd of March, P.J. Stanton. On the
11 2nd of March, P.J. Stanton. Again on the 2nd of March,
12 Esterbrook for the account of P.J. Stanton. On the 8th of
13 March, Remson. Again on the 8th of March it looks like
14 Kalin on behalf of somebody's account, which I can't make
15 out. On the 8th of March, John Stephens. Again on the 8th
16 of March, Kalin. On the 8th of March, John Stephens and
17 again on the 8th of March, John W. Stephens.

tklA
am

22 (Continued on next page)

Q Thank you sir.

Now, is it correct, Mr. Herman, that Mr. Mahler never directed your company to sell to any of those firms?

A To the best of my knowledge, that is correct.

Q It is also correct, is it not, Mr. Herman, that Mr. Mahler never told you what particular day the stock should be sold on?

A No.

Q It is not correct?

A No, that is correct.

Q In fact, the only instructions he gave you about the sale of that stock is that it should be done expeditiously, is that correct, sir?

A That's correct.

Q Is it true, sir, that to the best of your knowledge all the shares that were sold were placed on the Saxon ledger book by the cashier?

A That's correct, to the best of my knowledge.

Q Mr. Herman, it is correct also, is it not, that Mr. Mahler never asked you to recommend Industries International stock to any of your friends or customers?

A That is correct.

Q And it is also correct, is it not, that all the shares of Industries International sold for

hpbr 2

B.Herman-cross

Acquisitions & Investors were sold at the best possible price just as you would have done for any other customer?

A I can't answer that.

Q To the best of your knowledge.

A Again, I can't answer the question, counselor.

Q Is it your testimony that they were not sold at the best possible price?

A That may be true.

Q Mr. Herman, do you recall testifying at a prior proceeding in this case?

A Yes.

Q And you took an oath, did you not?

A Yes.

Q That was to tell the truth, the whole truth and nothing but the truth?

A Yes.

Q Of course at the prior proceeding you did tell the truth, the whole truth and nothing but the truth, is that right?

A Yes.

Q Just as you have taken an oath to do so today?

A That is correct.

Q Do you recall being asked the following question --

1 hpbr 3

B.Herman-cross

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2 MS. CHEPIGA: Objection. No foundation.

3 THE COURT: Let him ask the question first.

4 I can't tell.

5 Q Do you recall being asked the following question
6 and hearing the following answer at 2143, lines 8 through 10
7 in the transcript:

8 "Q The shares were sold by your firm, sir, for
9 Acquisition & Investors at the best possible price?

10 "A Yes."

11 Do you recall saying that, sir?

12 A You remind me now, I most likely did answer
13 that.

14 Q Pardon me, sir?

15 A I said I most likely did answer the question.

16 Q Is that true?

17 A It may be true.

18 Q Is it your testimony, sir, that that was
19 not true when you stated it?

20 A At this time I have certain reservations in
21 my mind.

22 Q So you wish to change your testimony, is that
23 what you are saying?

24 A Not completely. You just haven't asked me the
25 correct question, counselor.

1 hpbr 4

B.Herman-cross

2 Q To the best of your knowledge was it sold
3 at the best possible price or not?

4 A I cannot answer your question.

5 Q You did say yes in response to that question at
6 a prior proceeding, is that right?

7 A I have had time to think on the answer,
8 counselor.

9 Q And now you wish to change or qualify your
10 testimony, is that correct?

11 A That's correct.

12 Q You had no reason to believe it was the
13 best possible price, is that right?

14 A I cannot be sure that it was the best possible
15 price, counselor.

16 Q It is true, is it not, Mr. Herman, that your
17 firm sold stock for International Industries on behalf
18 of other customers?

19 A Yes.

20 Q That was at approximately the same price, is
21 that right?

22 A I am sorry, I'm not following your sequence of
23 questions.

24 MR. JANIS: Your Honor, may I have Government
25 Exhibit 284-F, please.

1 hpbr 5

B.Herman-cross

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2 (Handed.)

3 Q Mr. Herman, would you please take a look at
4 Government Exhibit 284-F, and would you please tell the
5 ladies and gentlemen of the jury what that exhibit is,
6 sir?

7 A Exhibit 284-F consists of a customer's account
8 card in the name of N.S. Ellison and a copy of a check, obvi-
9 ously in settlement of a sale.

10 Q Does that document also indicate who the check
11 was from?

12 A It was from Saxon Securities Corporation.

13 Q Do the documents indicate why Saxon Securities
14 sent Mr. Ellison a check?

15 Mr. Herman, I don't believe we have the
16 entire exhibit.

17 A I am trying to make it out from the stub.

18 Q That's the rest of the exhibit, sir (handed).

19 A Thank you. I also have a copy of a sales
20 ticket involving 500 shares of Industries International
21 that was sold for \$3.75 on behalf of N. Scott Ellison on
22 March 7th.

23 Q Can you tell from the records you already
24 have before you what price Acquisition Investors stock was
25 selling for at that time?

THE COURT: Acquisitions & Investors stock was not being sold.

Q The stock owned by Acquisitions & Investors?

A I can only determine that shares of stock were sold on the 7th of March at the price of \$3.75.

Q Do you recall testifying yesterday, sir, about Government's Exhibit 284-C. Do you have that exhibit, sir?

A Here it is.

Q Mr. Herman, would you look at Government Exhibit 284-C. Can you ascertain from that, sir, whether a sale of stock was made on March 5, 1973 on behalf of Acquisitions & Investors?

A Yes.

Q At what price was the stock sold?

A \$4, one sale.

Q That was on the 5th, is that correct?

A That is correct, on the 5th.

Q And the price the Ellison stock was sold for?

A \$3.75 on the 7th.

Q Is it true, sir, that as far as you were aware the sale of the stock owned by Acquisitions & Investors, by Saxon Securities was a normal brokerage transaction?

A To the best of my knowledge, yes.

Q And you received normal brokerage commissions, did you not?

A Saxon did, yes.

Q At no time did Mr. Mahler ever give you or offer you any cash or any undisclosed payment, is that correct, sir?

A That is correct.

MR. JANIS: Your Honor, I have no other questions.

MR. BLACKSTONE: One question, your Honor.

CROSS EXAMINATION

BY MR. BLACKSTONE:

Q To your knowledge, Mr. Herman, did your brother Harold Herman specialize in securities law in the early '70s?

A To the best of my knowledge he was working into that area.

MR. BLACKSTONE: Thank you.

THE COURT: Any redirect?

MS. CHEPIGA: A few questions, your Honor.

REDIRECT EXAMINATION

BY MS. CHEPIGA:

Q I believe, Mr. Herman, you were asked this morning about conversations you had with Mr. Mahler.

hpbr 8

B.Herman-redirect

87

A Yes.

Q At that time did you know a man by the name of Mr. Mahler?

A No.

Q What was the name your brother had given you?

A Arnold Nelson.

Q I show you Government Exhibit 284-B.

MR. JANIS: Objection, your Honor. This is beyond the scope of cross and --

THE COURT: How do I know? All that has happened is, counsel has shown the witness the paper. What does that tell me what the examination is going to be about?

Q When you testified this morning about conversations with Mr. Mahler, at that time you know him by the name of Mr. Nelson?

A That's correct.

Q In fact, when you received that exhibit from Mr. Nelson --

MR. JANIS: Objection, your Honor. This is beyond the scope of cross examination. This exhibit has already been published to the jury, is that correct?

THE COURT: The objection is premature and overruled for that reason. You may reassert it after the

BD5 page of this document, 288A in evidence, there is a word "Date" there, is there not?

A Yes.

Q There is no date there at all, isn't that correct?

A That's right.

Q You pleaded guilty to falsely dating those, is there a date there at all?

A There is a date there on the first page, November 2nd.

Q At the end where the signature is, where it says "Dated," is there any date at all?

A No, sir.

Q Did you plead guilty to falsely dating those?

THE COURT: He already told you he did. It's on the first page.

A I never noticed there was no date until this minute, on the back page. It doesn't make any difference.

Q With respect to the backdating of the minutes, did Mr. Mahler ask you to back-date the minutes?

A No, sir.

Q I believe you indicated payments came to you from the Midwest, at one point during the course of your direct examination.

1 A If I did I would have said something if it hit
2
3 me. It didn't raise a question in my mind at that time.

4 Q It didn't?

5 A No, sir.

6 Q In your experience as a securities --

7 A It has been demonstrated I am not such an
8 expert.

9 Q In this proxy, this Government 4, Bell-Ko proxy,
10 you are aware, are you not, that the direct and indirect
11 ownership of Mr. Mahler, Mr. Zucker and Mr. Ubben of shares
12 of stock are not in here, is that correct? It is not
13 reported in here?

14 A I don't recall it being in there.

15 Q You were aware, were you not, that
16 Mr. Zucker, and that these individuals did have a
17 substantial number of shares?

18 A I don't know if I knew it at that time.
19 I am sure I didn't know what they owned exactly at the
20 time of the proxy statement.

21 Q You knew they owned some shares?

22 A I knew it at the time that I wrote my opinion
23 but at the time that the proxy statement came to me I am
24 not sure what I knew at that time.

25 Q Did you ask them?

1 A I don't recall. I assumed that they were
2
3 either acquiring as part of the merger, as compensation,
4 shares of stock.

5 Q By the shareholders' meeting on December 18th it
6 was brought to your attention that all but 67,000 shares of
7 the 464,000 shares of Bell-Ko --

8 A That was read to me earlier. I had no
9 prior recollection before it was read to me that that was
10 even in the minutes.

11 Q Do you remember it being stated?

12 A No, sir.

13 Q Which do you think is more likely, that it
14 was stated or that --

15 A I am sure that it was stated and that's
16 verbatim but I might not have been paying attention to it or
17 if I was paying attention and it registered at that
18 time I have long since forgotten.

19 Q Did you ever tell Mr. Ubben that there was
20 anything wrong with the proxy?

21 A I never believed there was anything wrong with
22 it at the time.

23 Q Turning to the Government 288-A, could you
24 tell us again what 288-A is?

25 A 288-A are purported to be minutes of a meet-

ing held on November 2nd in my office.

Q Now, this is a meeting in which the Board of Directors, according to the minutes, the Board of Directors formally approved the merger into Bell-Ko Corporation?

A Yes, sir. There is one page in addition that's supposed to go with this which is the waiver signed by all the directors.

Q You understood you had deals with Mr. Lovejoy?

A Yes, sir.

Q You knew that as a practical matter Mr. Lovejoy and the company were intending to go ahead with the merger, is that correct?

MR. RAKOFF: Objection.

THE COURT: Sustained.

Q Did you have any information to the effect that Industries International, that there was any dispute about the fact that they were going to go forward with the merger and approve it?

A I mean Mr. Lovejoy's company?

Q Yes.

A They told me they intended to go forward with it.

Q It was a matter of formality?

1 hpbr 6

H.Herman-cross

2 A Yes, sir.

3 Q And --

4 A You mean these minutes?

5 Q Yes, those minutes were merely a matter of
6 formality, weren't they?

7 A In my mind, yes, at that time.

8 Q And it was your responsibility as part of
9 the original agreement to take and to arrange for all the
10 steps necessary to get the merger in order, is that cor-
11 rec?

12 A What agreement?

13 Q Your agreement with Industries International.

14 MR. RAKOFF: Your Honor, I don't know any
15 evidence for that. I object to the question.

16 THE COURT: I think you will have to rephrase
17 it.

18 Q You had an agreement with Mr. Nelson?

19 A An understanding.

20 Q And as part of that understanding you were
21 to attend to the legal mechanics of getting the
22 thing put together?

23 A Yes, sir.

24 Q And one of those legal mechanics was seeing to
25 it that the formalities of a Board of Directors' meeting

1 hpbr 7

H.Herman-cross

2 of Industires International would come about an approve the
3 merger, is that correct?

4 A Yes, sir.

5 Q And isn't it true that you regarded this as
6 such, the formality of a formal meeting, as so trivial
7 that you didn't bother to make sure that the company in
8 fact had a formal meeting at the time that you prepared
9 that?

10 A It's a long question but I would say generally
11 yes.

12 (Continued on next page.)

b pm

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Q Mr. Lovejoy didn't come to yo and say "We don't really want to have this formal meeting," it was your idea?

A Right. I considered it to be a rubber stamp.

Q Thankyou.

I wish to turn to your testimony relating to a conversation you had with Mr. Mahler regarding Mr. Ubben's request to get opinion letters.

Do you remember your testimony?

A Yes.

Q Could you tell us again what happened in regard to that?

A Mr. Nelson Mahler wanted to know if I would help out Mr. Ubben or somebody associated with Ubben with regard to a 133-D opinion letter, and I told him that I wasn't interested, you know.

So he then asked me if I would do him a favor and send an outline of 133-D and what has to be done to Mr. Reese, which I did.

Q Did you talk with Mr. Ubben about that?

A I believe Mr. Ubben spoke to me on the phone shortly thereafter.

Q I show you Government 552, which is your diary, and I show you pages -- well, dated February 5th and

hpbr 1 Needleman-cross

CROSS EXAMINATION

BY MR. SHARP:

Q Good morning, Mr. Needleman. My name is Jim Sharp and I represent Arnold Nelson Mahler.

You have indicated you entered a plea in this case. That was in August of 1976, is that right, sir?

A That's correct.

Q That was with respect to making false entries, is that correct, on documents that you were to have kept as the head of P.J. Stanton?

A I believe it related to certain trading tickets that were improperly prepared.

Q Mr. Wellens you indicated worked for you during the period of time we are concerned with, is that correct?

A Yes.

Q Mr. Wellens asked you to go into the pink sheets on HUP?

A That's right.

Q Mr. Wellens is the one who brought you the proxy on HUP?

A That's right.

Q Mr. Wellens is the one who asked you go into the pink sheets through Mr. Aiello in Industries International?

1 hbr 2 Needleman-cross

2 A That's correct.

3 Q It was through Mr. Wellens that you also receive
4 a proxy, is that correct?

5 A That's correct.

6 Q You didn't know Mr. Mahler during this period
7 of time, did you?

8 A No.

9 Q Mr. Mahler didn't ask you to go into the
10 pink sheets either on HUP or Industries International?

11 A No, he didn't.

12 Q Mr. Mahler never paid you any cash, did he?

13 A No.

14 Q Mr. Kulekofsky is a man not unknown to you,
15 ishe?

16 A That's correct.

17 Q Indeed, Mr. Kulekofsky had an account with your
18 firm, is that correct?--

19 A Yes.

20 Q He and his wife Barbara?

21 A Right.

22 Q And also Kule Resources?

23 A Right.

24 Q Isn't it true Scrip Equities, Mr. Zucker's
25 firm had an account with your firm?

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A I don't recall that name.

Q Do you know Mr. Zucker?

A No.

Q Do you know Scrip Equities?

A No.

Q Do you have any recollection as to whether or not you dealt with Scrip Equities at all, Mr. Wellens, your firm?

A I don't recall that we had an account.

Q Did you hear of Lipkin, Gusrae & Held?

A Yes.

Q They had an account with your firm, didn't they?

A Yes, they did.

Q Did Mr. Mahler ever have an account with your firm?

He didn't, did he?

A No.

MR. SHARP: I have nothing further.

MR. BLACKSTONE: I have no questions.

REDIRECT EXAMINATION

BY MR. RAKOFF:

Q You never knew about Mr. Mahler, correct?

A Correct.

1 gwbr

Tiemers-direct

578

2 (Document handed to the jury.)

3 CROSS EXAMINATION

4 BY MR. SHARP:

5 Q My name is Jim Sharp and I represent Mr. Mahler.

6 Mr. Tiemers, Mr. Rakoff did not ask you if
7 you had entered a plea in this case. Indeed, you have not
8 submitted on any matter in this case, is that correct?

9 A Yes, that is correct.

10 (Continued on next page.)

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gwds 1

Q You have never been charged with any wrongdoing in this matter, is that correct?

A That is correct.

Q You did indeed know Mr. Nelson, isn't that true?

A Pardon?

Q And you did indeed know Mr. Nelson?

A Yes.

Q When you were trying to establish yourself in ABS Registrar & Transfer, you did in fact receive small checks from various people when you opened up your office, isn't that correct?

A Yes, I did.

Q And Mr. Rakoff didn't ask you the amount of those checks. It was about ten and fifteen dollars apiece, is that right?

A Yes.

THE COURT: If Mr. Rakoff didn't ask him anything the jury will know that and it doesn't call for any questions from you.

Q The checks were ten of fifteen dollars apiece, is that correct?

A Yes.

Q Where was your business located, actually?

1 gwds 2

Tiemers - cross

100 580

2 A At the beginning, the startup, of the business
3 in '72, I operated out of my home. At a later point I
4 took an office at 999 Clifton Avenue, Clifton, New Jersey.

5 Q I believe you testified with respect to a
6 meeting at the Hilton Hotel in the fall of 1972. What is your
7 best recollection of the date of that meeting at the Hilton?

8 A October 15 to October 29.

9 Q My understanding is when you arrived there
10 with your wife that Mr. Nelson and his wife were there and
11 Mr. Zucker and his wife were there and eventually you also
12 met with Mr. Ubben, is that correct?

13 A Not at that moment. I met later.

14 Q You met Mr. Zucker and his wife, Mr. Nelson
15 and his wife downstairs in the dining area, is that correct?

16 A Yes.

17 Q And you were with your wife, is that correct?

18 A Yes.

19 Q And you had brought some papers on another
20 matter, is that correct?

21 A Yes.

22 Q And there came a time when the men adjourned
23 upstairs to Mr. Ubben's room, is that correct?

24 A Correct.

25 Q And you were asked whether or not at that time

1 gwds

Tiemers - cross

2 you typed out a stock certificate.

3 Did you type out a stock certificate?

4 A No, sir.

5 MR.SHARP: May I have the certificate shown
6 you by Mr. Rakoff?

7 Q Wouldyou please take a look at that certifi-
8 cate. Now, that is a Xerox copy, is it not?

9 A Yes, it is.

10 Q And a sheet of papers has been placed over
11 the front of it and then it has been Xeroxed, isn't that
12 correct?

13 A Yes, sir.

14 Q So part of that original stock certificate
15 has been masked, isn't that right?

16 A Yes.

17 Q To the extent that you can see the original
18 certificate, the parts on there, did you type that certifi-
19 cate in that hotel that day?

20 A No, sir.

21 Q The date of the certificate has been obscured,
22 has it not?

23 A Yes, it has.

24 Q And other matter, isn't that correct, and the
25 slip that is on the front of it, what is the term of art

1 gwds

Tiemers - cross

2 for that slip? What is that called that has been Xeroxed
3 over the front of that sheet?

4 A My terminology is a transit slip.

5 Q When would that have been prepared?

6 A Anywheres from one day to ten, fifteen, twenty
7 days after the final meeting of Bell-Ko Film Corp. into
8 Industries International, the stockholders meeting.

9 Q The stockholders meeting was on December 18,
10 isn't that correct?

11 A I believe so.

12 Q And your meeting in the hotel took place
13 before that for sure, isn't that correct?

14 A Yes, sir.

15 Q Mr. Rakoff indicated that in February of 1973
16 there came a time when you had a conversation with
17 Mr. Nelson with respect to the issuance of certain shares of
18 International Industries, isn't that correct?

19 A Yes, sir.

20 Q Those were restricted shares, weren't they?

21 A Yes, sir.

22 Q They were not freely tradable, were they?

23 A No, sir.

24 Q I believe you also indicated that at some point
25 in there -- at some point in there you indicated to

gwds

Tiemers - cross

A 103

583

Mr. Mahler your brother-in-law and his wife had had difficulties, that you were worried about the children, is that correct?

A Yes, sir.

Q And thereafter he saw to it that 2000 shares of Industries International was made out to your brother-in-law, Michael Baskinger, is that right?

A Yes, sir.

Q Those were restricted shares, too, weren't they?

A Yes, sir.

Q Those shares were properly issued, were they not?

A Yes, sir.

Q There was nothing wrong with the issuance of those shares and the other shares of restricted stock in February of '73, isn't that correct?

A Not to my knowledge.

Q You have been charged with no impropriety or irregularity with respect to the issuance of those shares?

A No, sir.

Q You also indicated -- I think it was 622-E, that is being passed to the jury here -- that certain opinion letters came into your possession signed by

1 gwds

Tiemers - cross

2 M. Reese, isn't that correct?

3 A Yes, sir.

4 Q Mr. Reese was not Mr. Mahler's attorney,
5 isn't that correct?

6 A Not to my knowledge.

7 Q And with respect to that particular exhibit,
8 Mr. Mahler had nothing to do with that particular exhibit,
9 isn't that correct?

10 A Not to my knowledge.

11 Q You also indicated you received an opinion
12 letter from Harold Herman freeing up certain shares and you
13 were told to go pick up those shares, isn't that right?

14 A I can't remember exactly whether I had the
15 canceled shares in my possession with the opinion letter
16 or whether I picked them up at Harold Herman's office.

17 Q Very well. But you did go to Harold Herman's
18 office, is that right?

19 A Yes.

20 Q It was on a Friday, wasn't it?

21 A Yes.

22 Q Was it March 2nd?

23 A Yes, sir.

24 Q Tell the ladies and gentlemen of the jury who
25 was at that meeting where these shares were transferred.

2 A Mr. Harold Herman and Mr. Ted Zucker and my-
3 self.

4 Q You, Mr. Zucker and Mr. Herman. Mr. Mahler
5 was not at that meeting, isn't that correct?

6 A No, sir.

7 Q I believe Mr. Rakoff also asked about a letter
8 that you received in Clifton, New Jersey, from Mr. Lovejoy,
9 signing in behalf of Industries International, in March of
10 1973.

11 Do you recall that?

12 MR.RAKOFF: It was February 23rd, I believe.

13 Q Let me then ask this question: Did there
14 come a time you received a letter from Mr. Lovejoy at your
15 office, Post Office Box 241, Clifton, New Jersey, in March,
16 1973, in which Mr. Lovejoy informs you that in connection
17 with the transfer of any securities --

18 MR. RAKOFF: I am sorry. I was wrong.

19 Q -- with respect to the transfer of any further
20 securities of Industries International you are first to
21 get in touch with someone or to inform Lipkin, Gusrae &
22 Held or Kule Resources Limited?

23 A In part the answer is yes.

24 Q At least tell us the part --

25 A The only part I differ with is the letter was

MR. JANIS: But I think the Advisory Committee notes and the Federal Rules of Evidence make it clear the same standard should be applied under Rule 403 as applied under Rule 609 and that the probative value must outweigh the prejudicial impact of the evidence.

THE COURT: In my judgment as this case has developed there will be no prejudicial impact that outweighs the probative value of the evidence, particularly in view of the nature of the several cross examinations that have been conducted.

MR. JANIS: Your Honor, if I could respond to that by noting two things. First of all there has been no intervening conviction of any sort so the probative value of a conviction 12 years old has to be very small.

Secondly --

THE COURT: Was Rule 133 in effect all during those 12 years?

MR. JANIS: I'm sure it was, your Honor. The other point I want to make, I hope the Court has not taken the statements Mr. Sharp has made on openings as indicating any sort of waiver whatsoever. We were informed, I think the record should be clear, to deal with the issue of prior convictions in the opening statements.

THE COURT: There is no reason to discuss

about an agreement between Mr. Lovejoy and International Industries, Government's Exhibit 680, I believe.

Would you please take a look at Government's Exhibit 680. Do you recall your testimony about that, sir?

A Yes, sir.

Q Mr. Nelson or Mr. Mahler was not a party to that agreement, was he?

A No, sir.

Q To the best of your knowledge, he had nothing to do with that, is that correct?

A I can't say that. I don't know.

Q You also testified on direct examination concerning a meeting in December of 1972 or a group of meetings in the Midwest, is that right?

A Yes, sir.

Q What was the subject of those meetings, if you can tell us?

A Oh, boy. They talked about various things; UGBI, getting different properties to be merged into M-Tec, and then ultimately HUP. I mean there were various things that were talked about.

Q There were a number of meetings there, were there not?

A Yes.

1 gwds

Plew - cross

2 Q Was Mr. Mahler present at any of those meet-
3 ings?

4 A No, sir.

5 Q You testified on direct examination concerning
6 meetings on November 29 and November 30, 1972, with Mr. Skeie;
7 do you recall that, sir?

8 A Yes, sir.

9 Q Is it correct Mr. Lovejoy, Mr. Ubben and your-
10 self were present at those meetings?

11 A Yes, sir, Ed Currie and Ed Horton also.

12 Q Was Mr. Mahler present at those meetings?

13 A No, sir.

14 Q To the best of your knowledge, did he partici-
15 pate in any way?

16 A No, sir.

17 Q It was at those meetings, was it not, that
18 Mr. Skeie was given the rights to the wet concrete contract
19 to the Dri-Flo pump?

20 A Yes.

21 Q To the best of your knowledge, did Mr. Mahler
22 have anything to do with that?

23 A No, sir.

24 Q It was at that meetings as well, was it not,
25 that you testified that an agreement was back-dated between

Mr. Skeie and Mr. Ubben?

MR. RAKOFF: I think that is a misstatement.

Q Did you testify that shortly after that meeting and agreement concerning the Dri-Flo pump was back-dated to September, 1972?

A Yes, sir.

Q Did Mr. Mahler, to the best of your knowledge, have anything to do with that back-dating?

A Not that I know of, no.

Q You testified, did you not, that there came a time, I think you said in around January of 1973, when you went to New York City and saw Mr. Kulekofsky?

A Yes, sir.

Q Who else was there at the time you saw Mr. Kulekofsky in his office?

A The people that I stated: Bill Wellens, myself, Bill Lovejoy and Mr. Kulekofsky.

Q Was Mr. Mahler present or a participant in any of those meetings?

A No, sir.

Q You testified as well, did you not, that in February, 1973, you went back to New York City?

A Yes, sir.

Q And you attended a meeting at the Coachman?

1 gwds

Plew - cross

110

718

2 A Yes, sir.

3 Q Was Mr. Mahler present or a participant in
4 that meeting?

5 A No, sir.

6 Q You also testified, did you not, that at the
7 meeting slides and tapes were presented?

8 A Yes, sir.

9 Q And, in fact, one of the tapes was played for
10 the jury, is that correct?

11 A Yes, sir.

12 Q To the best of your knowledge, did Mr. Mahler
13 have anything at all to do with the preparation of those
14 slides?

15 A No, sir.

16 Q To the best of your knowledge, did Mr. Mahler
17 have anything at all to do with the preparation of those
18 tapes?

19 A No, sir.

20 Q You have also testified regarding Tina Invest-
21 ments?

22 A Yes, sir.

23 Q And you have testified who was in control of
24 Tina Investments, is that right?

25 A Yes, sir.

1 gwds

Plew - cross

2 Q To the best of your knowledge, did Mr. Mahler
3 have anything at all to do with Tina Investments?

4 A No, sir.

5 Q Mr. Plew, at any time in your dealings in
6 International Industries with Mr. Mahler, did he ever offer
7 you stock in the company?

8 A Stock in which company?

9 Q International Industries.

10 A No.

11 Q Did he ever promise you any cash or undisclosed
12 payment?

13 A No.

14 Q Did he ever give you cash or any undisclosed
15 payment?

16 A No.

17 Q Did he ever go on trips with you?

18 A No.

19 Q Did he ever even take you out to dinner?

20 A No.

21 Q Did he ever have anything to do, to the best
22 of your knowledge, in your arrangements in the Midwest for
23 the two-for-one transactions on stock?

24 A No.

25 MR. JANIS: Your Honor, I have no other

1 gwds

Plew - cross

A 112

720

2 questions at this time.

3 CROSS-EXAMINATION

4 BY MR. BLACKSTONE:

5 Q Mr. Plew, what business are you in now?

6 A I am now president of Plew Engineering Systems.

7 Q And that business is in selling the pump?

8 A Yes, the Chargair Conveyor System, yes.

9 Q When did you go into the business of selling --
10 withdrawn.

11 What is the nature of the business? You manufacture
12 it, sell it, you do all the functions necessarily involved
13 in it?

14 A Yes, we do now. We just acquired the rest of
15 the rights January 17th of this year. We were just marketing
16 up until that point.

17 Q When did you begin getting involved, outside
18 of the investment part of it; when did you get involved
19 with actually -- this business you are in now, selling the
20 pump?

21 A In December of '73.

22 Q And did you have to pay any -- make any payment
23 to obtain these marketing rights for the pump?

24 A You are jumping ahead. I went back to
25 Industries International. I was asked by Bill Lovejoy to

1 hpds

2 113

44

2 done is to mark out what should be read and what should not
3 be read and the parts that should not be read, whatever the
4 legal reason is with which you are not concerned, I have
5 crossed off so that the reading will be continuous only of
6 testimony of the defendant Mahler as given in that proceed-
7 ing, the minutes of which the government will now read to
8 you.

9 MR. RAKOFF: Your Honor, this is the original
10 (handed).

11 THE COURT: Thank you.

12 MR. RAKOFF: I will read the questions put to
13 Mr. Mahler in his testimony and Miss Chepiga will read the
14 answers he gave.

15 THE COURT: The procedure that is following
16 now is, there is a lawyer who asks the question and the
17 witness Mahler is on the witness stand. It is easier for
18 you to follow if the same lawyer doesn't read the questions
19 and answers so Mr. Rakoff will be in the posture of the man
20 who is asking the questions, and Miss Chepiga will be, for
21 this purpose, Mr. Mahler, who gave the answers.

22 MR. RAKOFF:

23 "Q Mr. Mahler, on December 27 1965 you
24 were convicted of conspiring to give false testimony to the
25 Securities & Exchange Commission in connection with the

1 hpds

2 compensation you paid your salesmen in selling Bankers
3 Intercontinental stock?

4 "A Yes, I was.

5 "Q Now, on September 26, 1966, did you
6 plead guilty to Count 1 of Indictment 65 Cr. 698 charging
7 you with conspiracy to sell by fraudulent means the stocks
8 of Bankers Intercontinental and Florida Patsand?

9 "A Yes, I did, sir.

10 "Q On November 21, 1966, did you for
11 Broadwall Securities plead guilty to Count 1 of Indictment
12 65 Cr. 698?

13 "A Yes, I did, sir.

14 "Q And did you on November 21, 1966 plead
15 guilty to six counts of a scheme to defraud in connection
16 with the sale of stocks of Bankers Intercontinental and
17 Florida Patsand?

18 "A Yes, I did, sir.

19 "Q Mr. Mahler, how old are you?

20 "A 31 years old, sir.

21 "Q Are you presently employed?

22 "A No, I am not, sir.

23 "Q Were you ever associated with a company
24 called Broadwall Securities, Inc.?

25 "A Yes, I was, sir.

1 hpds

A 115

746

2 "Q What was your association with that
3 company?

4 "A I was president and stockholder.

5
6
7
8 (Continued on next page)
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1 hpbr 1

"Mahler

2 "Q What was that company, sir?

3 "A It was an over-the-counter securities
4 brokerage firm.

5 "Q Where was it located?

6 "A 26 Broadway, New York City.

7 "Q And for how long did you own and control
8 Broadwall Securities?

9 "A Approximately two and one-half years, sir.

10 "Q From what date to what date?

11 "A September of 1962 until March of 1965.

12 "Q And did you ever have any business
13 transactions with a company called Charters & Company of
14 Miami?

15 "A Yes, I did, sir.

16 "Q And when for the first time?

17 "A Approximately July of 1964.

18 "Q In what connection did you have that
19 association?

20 "A In connection with a stock called Fibercraft
21 Products.

22 "Q What were the circumstances surrounding
23 your business association with Charters and Ribercraft
24 Products?

25 "A I had spoken to Mr. Dermer of Charters &

1 hpbr 1

Zucker-direct

2 Q It is made out to an Edward Currie. Who
3 is Mr. Currie?

4 A I guess he is a nominee of Mr. Ubben's.

5 Q Finally it says for purchase of 40,000
6 shares of HUP, and that's the concealment you told us
7 about previously?

8 A That is correct.

9 Q In fact, you never got the 40,000 shares of
10 HUP?

11 A I never got the shares.

12 MR. RAKOFF: No further questions, your Honor.

13 THE COURT: We'll have a recess at this time.

14 (Jury left the courtroom.)

15 THE COURT: We will take a short recess.

16 It occurs to me, gentlemen, that dealing in this sophisti-
17 cated securities type matter, that either on direct or
18 cross examination somebody ought to trace out the mechanics
19 of what occurs without the details of the transactions under
20 scrutiny themselves.

21 In other words, there have been conversa-
22 tions here and this witness has testified to selling
23 shell dealers and controllings the shell. While
24 everybody present here, now that the jury has gone to recess,
25 understands what is going on, you would think that in the

2 THE COURT: Anything else?

3 MR. JANIS: Your Honor, in the alternative
4 if the Court denies motion for judgment of acquittal we would
5 move for a mistrial or in the alternative move to have this
6 indictment dismissed, on the alternative for a mistrial, on
7 the ground more than one conspiracy has been shown and
8 hearsay testimony and statements were introduced into
9 evidence against Mr. Mahler.

10 We would also ask that all hearsay statements
11 be stricken since we don't believe sufficient con-
12 nection has been shown.

13 In the event those motions are denied, your
14 Honor, we would ask that certain surpluses in the indict-
15 ment be stricken. In particular, I refer the Court to
16 the following parts of the indictment.

17 On Page 2 of the indictment, Paragraph 3,
18 there is a statement beginning "Falsely evading the
19 federal registration requirements and other federal regula-
20 tions governing the sale of securities."

21 Judge Frankel I thought, had dismissed all
22 counts dealing with that.

23 Also, Page 1, Paragraph 2, there is language
24 which appears throughout this indictment and this is just one
25 example, referring to this as "a sophisticated stock

1 hpbr 2

2 swindle". That should be stricken as well.

3 THE COURT: You think it is unsophisticated?

4 I think "sophisticated" or "swindle" have no place
5 in the indictment. Count 9 charges Mr. Bialek had
6 complicity in the group of conspiracies, yet he is not named
7 as co-conspirator, co-schemer or anything else nor is he
8 identified anywhere in the indictment. In fact he has been
9 acquitted of the charges the government --

10 THE COURT: You say it is in Count 9?

11 MR. JANIS: Count 9.

12 THE COURT: Yes, I see it.

13 MR. JANIS: Count 13 --

14 THE COURT: You say Bialek is charged here
15 as a criminal?

16 MR. JANIS: Charged as to complicity --

17 THE COURT: Where does it say he is charged
18 as a criminal?

19 MR. JANIS: In Count 9?

20 THE COURT: Yes.

21 MR. JANIS: It indicates Mr. Bialek partici-
22 pated in providing for any financial statements. At
23 least that's how I understand the count.

24 THE COURT: The exact language "To discuss
25 having Lawrence Bialek provided new financial statements

1 conversation with Mr. Ubben. That conversation happened
2 to do what they wanted to get from Mr. Bialek. It
3 doesn't say anything about Mr. Bialek's intent or anything
4 else. It's talking about what Mr. Wellens and Mr. Ubben
5 wanted to get done in furtherance of the fraud.
6

7 THE COURT: Is it possible that in the
8 original indictment there was some language that may have
9 sidetracked Mr. Janis into thinking this was more of the
10 same in this superseding indictment?

11 MR. RAKOFF: I don't know, your Honor.

12 THE COURT: I'm just wondering what the
13 genesis of his thought was. How about in Count 13,
14 Paragraph 14(a), where we have Greenberg talked about?

15 MR. RAKOFF: The overt act it is charged there,
16 that Mr. Tiemers unlegended certificates for 80,000
17 shares to Harold Herman which were then resold and the
18 proof in the trial has been they were resold for the
19 benefit among others for the two benefits.

20 THE COURT: Am I mistaken that an innocent act ma
21 be use as an overt act in the event of conspiracy?

22 MR. RAKOFF: You are correct, your Honor.

23 THE COURT: The motion made by defendant
24 Mahler and severally is denied. More than enough has
25 been established here beyond a reasonable doubt. Since

statement in the context of this case?

MR.JANIS: It may be, but it is also the best evidence of the conversations.

THE COURT: Rule 613B does not make an exception for what you refer to as the best evidence.

MR. JANIS: That deals with prior inconsistent statements. Your Honor, at the first trial the govenment introduced these very same tapes as the --

THE COURT: That is not binding on me. I was not at the first trial.

MR.JANIS: We want to indicate and offer proof to the jury that it was Mr. Zucker and Mr. Greenberg who made the arrangements. By far the best evidence of that fact is the very conversations that they held.

THE COURT: It looks to me it is using words to hide a meaning.

In the request to charge, you have given me another charge which you have annotated and I have my own notations of the charge and I would like to have you point out to me what it is particularly that you are requesting. The rule is that if there is any part of your request that I don't agree with, I don't have to edit it. I don't want to get into that posture and say that whatyou have handed up to me contains matter that is not acceptable and therefore

1 hpds 7

2 I reject it all. I don't like to operate that way. I would
3 like to get your help, that is, to anything that you think
4 should be charged. that is not contained in the charge that
5 I might give.

6 I have substantially modified the request of
7 the government to take out a good deal of material that they
8 have put forward and streamlined it. A large part is in
9 reference to the facts.

10 If that gives you any help towards telling me
11 what it is in particular you want, I will be guided by it.
12 Other than that, I will have difficulty in determining what
13 it is that you are presenting that is new or different or
14 which should be given.

15 I understand the juror left at twenty after
16 7:00 this morning. His wife now is concerned why he isn't
17 here. We will wait a few minutes more.

18 Another thing. Where you say I should insert
19 instructions, 6582 and 6583, I don't intend to examine a
20 7000-page record to find out what you are talking about.
21 I don't have a copy and don't intend to do any such thing.

22 MR.JANIS: Your Honor, those pages are include
23 in the package the Court has.

end
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am

1 dwbr

Mahler-direct

2 Q How long did you work there?

3 A Worked there from approximately 1960 until
4 1962.

5 Q After you left Hornblower & Weeks, where did
6 you go?

7 A I informed my own brokerage firm and became
8 a principal in a company called Broadwall Securities.

9 Q When was that?

10 A I believe that was the fall of 1962.

11 Q Did there come a time that in that position,
12 as we have previously aired here, that you were indicted?

13 A Yes, sir.

14 Q Tell the ladies and gentlemen of the jury
15 about what took place thereafter.

16 A I was indicted regarding a company called
17 Bankers Intercontinental, and I was convicted and sentenced
18 to serve time, and I did serve at the Federal Correctional
19 Institute in Danbury, Connecticut, a total of 101 days.

20 Q When were you convicted, what year?

21 A 1965 -- 1967.

22 Q Tell the ladies and gentlemen of the jury what
23 your convictions were for again, please.

24 A The first conviction was for false testimony
25 before the Securities and Exchange Commission and the second

1 dwbr

Mahler-direct

2 124 1319

3 conviction was related to the same company for the payment
4 of cash commissions to my salesmen.

5 Q The first one, with respect to the false state-
6 ment, that was before the Securities & Exchange Commission,
7 is that right?

8 A That is correct, sir.

9 Q Were you under oath at the time?

10 A Yes, I was.

11 Q Did you later admit to the government that in
12 fact you had lied?

13 A Yes, I did.

14 Q After you got out of the Federal Correctional
15 Institute there in Danbury, by the way, what year was that?

16 A June 18, 1967.

17 Q Where did you go then? What did you do?

18 A I then attempted to seek employment.

19 Q Where?

20 A New York, New Jersey, Connecticut.

21 I started to work for a company called Amonite Tile,
22 selling tile to wholesale and retail hardware stores.

23 Q Where you successful at that?

24 A I was earning a living, sir.

25 Q Were you married then?

A Yes, I was.

1 dwbr

Mahler-direct

2 Q There has also been testimony during the
3 course of the last two weeks that you used -- by the way,
4 what is your full name?

5 A Arnold Mason Mahler.

6 Q There has been testimony that you used not
7 only the name Arnold Mahler but also the name Arnold Nelson,
8 is that true?

9 A That is correct, sir.

10 Q Why did you do that?

11 A On my release again from Danbury.

12 Q You have to speak up, please.

13 A On my release from the Federal Correctional
14 Institution in Danbury I was very embarrassed. I was also
15 embarrassed for my family. And I felt that if I
16 could gain some prestige, however small it might be, by
17 associating myself with my grandfather's name, whose name
18 was Nelson. My mother's maiden name was Florence
19 Nelson. My grandfather had an excellent reputation
20 in New Jersey and I felt if I could gain some prestige
21 by the use of his name and help myself by not using the name
22 Mahler I would do so and I used the name Arnold Nelson.

23 Q Let me ask you about HUP Industries..
24 When did you first hear that name?

25 A First heard the name HUP approximately the

1 hpds 14

Mahler - cross

2 Q And you lied again, didn't you?

3 A Yes, I did.

4 Q And then you were convicted and sentenced
5 and then you pled guilty in the other stock fraud case?

6 A Which was related to the exact same incident,
7 that's correct.

8 Q Now, wait a minute. There were a number of
9 stocks involved, weren't there?

10 A No, there was Bankers Intercontinental and
11 that was the company I denied paying cash to my salesmen.

12 Q Wasn't there a company named Florida Patsan?

13 A I was not indicted for that and neither was
14 Fiber Craft, which I also pleaded guilty to.

15 Q Coast to Coast?

16 A I was not indicated in that case either.

17 Q That was another stock fraud, wasn't it?

18 A That was a civil injunction. That is correct,
19 another stock fraud.

20 Q In which you participated?

21 A Absolutely.

22 Q Communications Industries?

23 A I don't recall that one at all.

24 Q Edge-O-Tronic?

25 A I don't recall that one.

1 hpds 15

Mahler - cross

2 Q Honeycomb Products?

3 A That was used by Broadwall to receive money
4 back. I recall that one.

5 Q You pled guilty in that case, the second
6 indictment?

7 A Correct.

8 Q And then you testified as a government witness?

9 A That is correct.

10 Q Did you tell the truth?

11 A Yes, I did.

12 Q You had not yet been sentenced in that case,
13 had you?

14 A No, sir.

15 Q You had not yet gone to prison on your first
16 sentence?

17 A That's correct.

18 Q And spent a day in jail at that point, right?

19 A I don't recall, Mr. Rakoff, but I believe
20 you're correct.

21 Q You had even put in a motion for reduction of
22 your first sentence?

23 A Yes, I did.

24 Q Notwithstanding all that, you told the truth,
25 did you not?

hpds 16

Mahler - cross

A I did.

Q ou explained that the stock frauds we've just been talking about involved unregistered stock, correct?

A No, sir.

Q No?

A No.

Q They didn't involve unregistered stock?

A No, they did not. If you're asking me whether there were shares unregistered, that was not the complaint. The complaint was the size of stocks and payment to brokers which I was --

Q They were unregistered?

A They were exempt.

Q No registration statement had been filed, is that right?

A That's correct. It wasn't required.

Q They also involved cash bribes and kickbacks?

A I will eliminate the word "also". That's correct.

Q And indeed the charge against you, in part, was that you paid cash kickbacks to your employees?

A That is correct.

Q And they also involved prearranged sales of

1 hpds 17

Mahler - cross

2 stock?

3 A They involved prearranged sales of stock,
4 that's correct.

5 Q Illegally prearranged sales of stocks?

6 A Correct.

7 Q And it also involved rigged prices?

8 A Correct.

9 Q And it also involved back-dated records?

10 A Yes, sir.

11 Q In fact, you yourself back-dated some of those
12 records, didn't you?

13 A Yes, I did.

14 Q And they also involved the destruction of
15 documents?

16 A I don't recall that, Mr. Rakoff.

17 Q And they also involved a coverup scheme to
18 lie to the SEC?

19 A I don't recall that either.

20 Q You don't recall that? Isn't that what
21 your first conviction was all about?

22 A No, that was my own testimony, my own choice,
23 something I decided I did wrong. I don't believe that was
24 discussed with anyone else.

25 Q Wasn't your first conviction in two counts?

1 hpds 18

Mahler - cross

130
1427

2 A I don't recall, Mr. Rakoff.

3 Q Wasn't one of those counts for getting your
4 fellow brokerage employees to lie to the SEC to cover up
5 the cash kickbacks that you had given them?

6 A It could be. I don't recall.

7 Q And you say it's all very different from the
8 case here.

9 A Like night and day, Mr. Rakoff. Like night
10 and day.

11 Q Incidentally, when you testified in that case,
12 you were accused, were you not, of trying to bury
13 Mr. Light because of some conflict between you and him on
14 another matter?

15 A Mr. Rakoff, I have spent two years working
16 on this case. I do not recall the testimony in the trial
17 in 1965. I'm sorry.

18 Q Let me see if I can refresh your recollection..
19 Do you remember being asked by the defense attorney in the
20 Light case:

21 "Q Isn't it a fact that Mr. Light declined
22 to pay and did not pay 25,000 to you?

23 "A That is not a fact, no, sir."

24 THE COURT: Mr. Rakoff, just stand still when
25 you read that so we can follow you.

hpds 19

Mahler - cross

A. Mr. Rakoff, might I ask you to read it here and I can answer those questions as you go through it. I don't recall the questions and answers now.

Q Do you recall any of that testimony?

A No, sir.

Q Will you accept that's what the transcript says? It's in evidence.

A Yes, I will.

Q "Q And isn't it a fact that you said to him in words or substance 'I will bury you if you don't pay me that money'? Did you say that to him?

"A No, sir."

Isn't that what gave you the idea to make that allegation in this trial against Mr. Zucker?

A Mr. Rakoff, the last trial I thought was behind me and forgotten, and I could start again, but obviously that's not the case. I certainly didn't think of that case when it came to this one. It's a nightmare.

Q What happened specifically was that you wound up spending three and a half months in prison, is that right?

A I believe 101 days.

Q That comes out to three and a half months.

A Correct.

Q Then you got out and you went into the shell

business?

A That's not what I said. That is not correct initially.

Q There did come a time when you went into the shell business, is that right?

A Yes, that's right.

Q When was that?

A 1969.

Q Approximately a year and a half after you got out?

A Approximately a year and a half to two years, that's correct.

Q And you were warned by Mr. Hecht that that was an area the SEC was very concerned about?

A In 1971 Charlie represented me and did so warn me, yes.

Q He sent you releases?

A All the releases I did receive and I had them in a file in my office, yes.

Q He said that this area, if you weren't very, very careful, was one that was absolutely fraught with the danger of fraud.

A That is absolutely correct.

Q Notwithstanding that, you devoted a great deal

of time to it, did you not?

A I had the fortunate advantage of having Mr. Hecht represent me. Yes, I did spend my time on it.

Q Indeed, you became known as the king of shells, did you not?

MR. SHARP: Objection, your Honor.

THE COURT: Overruled.

A I only heard that reference, Mr. Rakoff, from you.

Q Only from me?

A Yes.

Q When did you hear it from me?

A When we were talking about my testimony in this case months before the indictment.

Q You then hired Mr. Zucker?

A Yes.

Q You knew he had a bad past?

A It was July or August of '72, I believe, yes.

Q You once stated that you were the only one who would give him a job, is that right?

A To that effect, yes.

Q And you did give him a job?

A Yes.

Q And you trained him in the business?

1 hpds 22

Mahler - cross

2 A That's correct.

3 Q And one of the things you worked on with
4 him was HUP?

5 A Yes.

6 Q And you prepared the proxy, did you not?

7 A No, I prepared it in conjunction with
8 Mr. Herman but I worked actively on it.

9 THE COURT: I am told that the jurors can't
10 hear you either. Will you speak into the microphone.

11 THE WITNESS: I'm sorry, your Honor.

12 Q That's the proxy, right, Government Exhibit 39?

13 A Yes, it is.

14 Q You and Mr. Zucker controlled the shell, did
15 you not?

16 A Yes, we did.

17 Q But that was not revealed anywhere in that
18 proxy?

19 A No, it was not. It was not required.

20 Q Not required?

21 A That's correct.

22 Q Hadn't Mr. Hecht warned you specifically it
23 was required?

24 A Quite the opposite. He said it was required
25 if we were in a control position to be either an officer,

1 hpds 23

Mahler - cross

2 director; to control management decisions, policy decisions
3 or together owned 10 percent of the outstanding shares.
4 It would then be required.

5 Q You and Mr. Zucker did control the shell, did
6 you not?

7 A Yes, we did.

8 Q Don't you recall just last Friday Mr. Hecht
9 saying that that would be required to be revealed?

10 A To be revealed in a reorganization as to the
11 number of shares that were owned after the merger. We did
12 not --

13 Q Did you after --

14 MR.JANIS: May the witness finish his answer.

15 MR. RAKOFF: I'm sorry.

16 A I did not own or control 10 percent of the
17 outstanding shares of this company, meaning HUP Industries,
18 after the reorganization.

19 MR. RAKOFF: Maybe the reporter can read the
20 question back.

21 (The following question was read: "Question:
22 Don't you recall just last Friday Mr. Hecht saying that
23 that would be required to be revealed?")

24 Q "That" being the control of the shell.

25 A Mr. Hecht's testimony did not state the

1 npds 24

Mahler - cross

1432

2 control of the shell had to be disclosed, as you were
3 referring to it. He gave examples. He said under certain
4 circumstances it could, on direct and recross, and on his
5 direct he gave examples where he felt where in his opinion
6 controlling shareholders should be placed in a booklet and
7 the example I followed, on the HUP deal, if I was not a
8 10 percent shareholder after the reorganization, it was
9 not required.

10 Q Don't you recall my placing that very booklet
11 in front of Mr. Hecht?

12 A And you would ask him those questions and --

13 Q Could you just answer the question?

14 A Yes, I do.

15 Q And I asked him whether you would have to
16 reveal control of the shell.

17 A You gave him a list of circumstances that
18 did not refer to HUP because Mr. Hecht did not know he said
19 to you the circumstances surrounding HUP particularly.
20 You gave him a hypothetical, Mr. Rakoff.

21 Q Do you remember Judge Pollack saying: "Do
22 you have to reveal who is in control of the shell? Yes
23 or no?" And, the witness saying, "Yes."

24 A Those were under a set of circumstances you
25 asked him that did not relate to HUP Industries.

hpds 25

Mahler - cross

Q The question that proceeded that was: "I show you a proxy that was prepared in connection with HUP and the name of the shell there was M-Tec. Let me ask you, would it have been necessary under the fraud provision of the securities laws to reveal who controlled the shell corporation?"

Those were the hypotheticals.

A What was the answer?

Q The answer was: "With respect to the dormant publicly held company" -- that the shell, right -- "you should disclose who is the actual record or beneficial owner of at least 10 percent of stock."

A Correct.

Q Of the shell?

A That's correct.

Q You owned a lot more than that, didn't you?

A Mr. Rakoff, you're referring now to something prior to a merger and after a merger and what we are referring to here is who is in a position to control the operation of the company and the 10 percent rule or guidelines -- there are no rules -- referred to who controls the company and I did not not only control it, I did not own 10 percent of HUP after the reorganization.

end
tk2
pm

Q You mean like Industries and Bell-Ko, isn't that --

MR. SHARP: Objection, your Honor.

Q At the time you broke up with Mr. Zucker you were working on a number of other transactions, were you not?

A Yes, I was.

Q One of those was a thing called Transcontinental Video?

A If you can refresh my memory as to the date.

Q Do you remember a man named Al Netter?

A Yes, I do. I don't remember the date on the transaction.

Q Mr. Netter was the man who was kind of like the finder or promoter on that deal?

A No, he was the principal in that company.

Q He was the principal in that company. All right. You discussed with him how these shells deals would really work, right?

A I don't recall.

Q You don't recall talking to him on the telephone?

A No, I know I spoke to Mr. Netter several times. I don't recall the nature of the specific conversations.

Q Don't you remember saying to Mr. Netter that --

Dwbr

Mahler-cross

1454

MR. JANIS: Your Honor, may we have a date on this?

Q In 1973. -- that "The way I will eventually set this deal up, and I am talking to you your language now, so that you know the stock can be made most any price. We will have the set-up so that there will only be a total of 50,000 shares outstanding, okay? So that if we want it at 4, 5, 6 or 7, we will talk about that later. That's between you and I, don't let the conversation go any further."

Do you remember saying that, Mr. Mahler?

A If Mr. Netter would come in and say that was so, that would be so. I don't recall that conversation.

Q Well, Mr. Netter is dead. You know that, don't you?

A No.

Q You didn't know that.

A I had heard from Mr. Zucker that something had happened recently at this trial but no, I did not know.

MR. JANIS: Your Honor, I object and I ask that all that question be stricken from the record. We cannot confront Mr. Netter. Mr. Rakoff knew that and it is highly improper. It doesn't have anything --

1
2 THE COURT: I think what you are doing is highly
3 improper.

4 MR. JANIS: I ask Mr. Rakoff's remark be
5 stricken.

6 THE COURT: That's a different point.
7 You said much more than that. Your statement will be
8 disregarded from the jury.

9 MR. JANIS: I ask that the statement that
10 Mr. Rakoff made be stricken from the record.

11 THE COURT: Stricken. Please remember the
12 deportment of the trial. Don't forget it in the excitement
13 of any minute.

14 Q Did you know Mr. Mahler that Mr. Netter made
15 a tape recording of your conversation?

16 MR. JANIS: Objection, your Honor, same
17 objection.

18 THE COURT: Overruled. This is cross
19 examination.

20 MR. JANIS: This is concerning --

21 THE COURT: This is cross examination and it
22 is a proper question to ask.

23 MR. JANIS: Your Honor, may I state the
24 ground for my objection?

25 THE COURT: Yes, you can write it out.

1 dwbr

Mahler-cross

2 BY MR. RAKOFF:

3 Q You would recognize your voice if you heard it?

4 A I would think so.

5 Q Do you deny making that statement I just read
6 to you?

7 A I don't deny, I don't admit it, Mr. Rakoff.
8 I don't recall it.

9 Q You don't admit it?

10 A I do't admit it. I don't deny it.

11 Q If you made it it would show, would it not,
12 that you were fixinb the price on the stock in these shell
13 deals?

14 A I don't recall making the statement. I re-
15 peat what I said.

16 MR. JANIS: Your Honor --

17 MR. RAKOFF: Your Honor, I propose --

18 THE COURT: Just a minute until I receive
19 Mr. Janis' note.

20 (Note given to Court.)

21 THE COURT: This is Court's Exhibit 5.

22 (Court Exhibit 5 was marked.)

23 THE COURT: Your objection is overruled.

24 Show the document to Miss Chepiga.

25 MR. RAKOFF: May I have this marked as

Government's Exhibit 832.

(Government's Exhibit 832 was marked for identification.)

Q Mr. Mahler, why don't you listen to this with the earphones and tell me if it refreshes your recollection as to whether you made that statement or not.

(Witness complies.)

Q Can you hear it?

Do you recognize your voice, Mr. Mahler?

A You get to, Mr. Rakoff, you can hear it, there is a buzz on there. I really cannot make it out.

Q Is it your testimony you cannot recognize your voice on that tape?

A Not on this -- if you can clear it up I'll try again. It is a solid buzz on it.

Q You are saying you cannot?

A No, that is Mr. -- you can hear the other side. Now, listen to when supposedly my voice is on there.

Q Is it your testimony you cannot recognize your voice on that? Is it your testimony, under oath, Mr. Mahler, that you do not recognize your voice on that?

A I cannot confirm that is or is not. No, I cannot confirm that is my voice, Mr. Rakoff.

MR. RAKOFF: Your Honor, we will offer to play

to the jury, Government Exhibit 832.

MR. JANIS: Your Honor, has anyone authenticated this tape? I object to it.

THE COURT: Will you please go on to something else and I'll rule on it during a recess.

MR. RAKOFF: All right.

Q You said you did recognize Mr. Netter's voice there, did you?

A I would not recognize Mr. Netter's voice. If anything I would recognize my own voice I think but I certainly don't recognize Mr. Netter's voice.

Q You recognize the conversation was about something between?

MR. JANIS: Your Honor, objection.

Q Without describing what the conversations with Mr. Mahler was about, was it about something as to what you have made arrangements?

MR. JANIS: Objection, your Honor.

THE COURT: Objection is overruled. Put the question this way: Was the subject matter something that you recognized as a subject matter that involved a conversation?

THE WITNESS: I cannot say that to be so, your Honor, no, I am sorry.

hpds

given in a narrative -- I indicated I was going to show you before it was over the reason why Kulekofsky and Zucker chose to do this, I was going to show you how they actually pulled it off and they all but have.

If you want to know the honest truth, Kulekofsky and Zucker have gotten Mr. Mahler now to this point. The next step is in the jury box, it is yours. If they have convinced you, they pulled it off. It is as simple as that. It is not going to do me any good and beat my breast and cry.

Mr. Mahler had a prior conviction. The conviction was false statements and paying cash to his employees. Zucker had a problem too. Zucker had a prior injunction but that's not a conviction in the sense that that was a civil injunction.

Kulekofsky, he had testified in 1962, in a stock swindle. Do you remember him admitting to that? Both of them were somewhat sophisticated. They understood acquisitions and mergers. Both of them knew what they were doing and were as greedy as they can be. They were telling you on the stand, and so was this man, greedy for a dollar. All of us were.

I told you about the deals made. We on this side of the bench know what a deal is when it comes to a

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• 57661047(M.D.) 10/13/77
3:15 pm

Your Honor,

Please note our objection to the statements of Mr. Braverman concerning Mr. Bialek's state of mind or mens rae in the preparation of the financial statements. A jury has already voiced its contrary opinion by acquitting Mr. Bialek, and the government should not be permitted to contest this finding. We were unable to object in open court in light of the Court's directive concerning comment on the first trial.

Please also note our objection to any similar proffer of proof by the government at any future time in this trial.

Respectfully Submitted,

Messrs. Sharp & Janis
Counsel for Defendant Mahler

USA 55a-476
(J.D. 4-23-71)
EXHIBIT

EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

4 in

OCT 13 1977

FPI-M-8-24-78-BOM-4417

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

vs.

76 Cr. 1047

ARNOLD NELSON MAHLER, a/k/a
ARNOLD NELSON and DEAN H. UBBEN,

Defendants.

Before:

HON. MILTON POLLACK,

District Judge

December 8, 1977

A P P E A R A N C E S

ROBERT B. FISKE, JR., ESQ.
United States Attorney for the
Southern District of New York

BY: JED S. RAKOFF, ESQ.
Assistant United States Attorney
PAIOLA CHEPIGA, ESQ.
Assistant United States Attorney

JAMES E. SHARP, ESQ.
RICHARD JANIS, ESQ.
Attorneys for Defendant Arnold Nelson Mahler

DAVID BLACKSTONE, ESQ.
Attorney for Defendant Dean H. Ubben

of course, to show mercy. I think he said what I would say. The population of Beatrice is 12,000 people, and I think I have let some of those people down, and I do think the people in Beatrice are interested in the outcome of the trial.

I thank you. I want to ask one more time if you can show mercy in my case. I would appreciate it. Thank you.

THE COURT: Mr. Rakoff, is there anything you want to say?

MR. RAKOFF: No, your Honor.

THE COURT: The situation of Dean Ubben is different from that of Arnold Nelson Mahler, but only in degree. He, too, on the witness stand has perjured himself beyond a reasonable doubt in attempting to exculpate himself from miserable, shoddy, unlawful, deceitful practices which included the reprehensible attempts to mislead family and friends for the illicit schemes.

Suffice it to say that the defendant is committed to the custody of the Attorney General or his authorized representative on counts 1, 4, 6 and 7 for a term of four years on each count, to run concurrently; on counts 2, 5, 9 and 11, for a term of four years on each count, to run concurrently; on counts 3, 8, 10 and 12, for a term of four years on each count, to run concurrently.

AFFIDAVIT OF MAILING

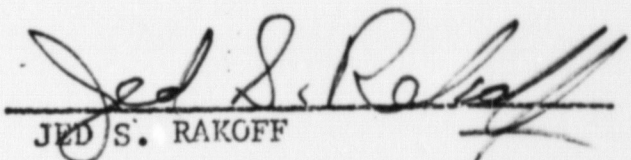
STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

JED S. RAKOFF, being duly sworn,
deposes and says that he is employed in the office of
the United States Attorney for the Southern District
of New York.

That on the 20th day of April, 1978,
he served a ~~copy~~ of the within ~~brief~~ by placing the same
in a properly postpaid franked envelope addressed:

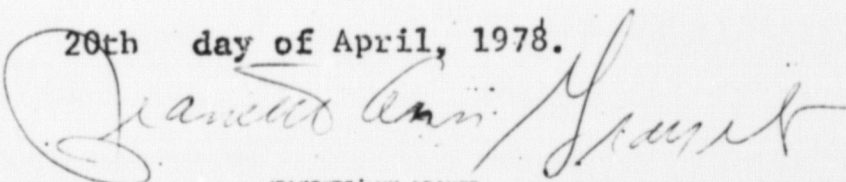
- (1) DAVID BLACKSTONE, ESQ.
(Attorney for Appellant Ubben)
401 Broadway
New York, NY 10013
- (2) JAMES E. SHARP, ESQ.
(Attorney for Appellant Mahler)
1220 Nineteenth Street, N.W.
Washington, DC 20036

And deponent further says that he sealed the said envelope
and placed the same in the mail box for mailing at One St.
Andrew's Plaza, Borough of Manhattan, City of New York.


JED S. RAKOFF

Sworn to before me this

20th day of April, 1978.


JEANETTE ANN GRAY
Notary Public, State of New York
No. 24-1541375
Qualified in Kings County
Commission Expires March 30, 1979